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October 19, 1988

Briefing on How To Use the Federal Register—
For information on a briefing in Washington, DC, see announcement on the inside cover of this issue.

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THE FEDERAL REGISTER
WHAT IT IS AND HOW TO USE IT

FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC

WHEN: November 4; at 9:00 a.m.
WHERE: Office of the Federal Register, First Floor Conference Room, 1100 L Street NW., Washington, DC
RESERVATIONS: 202–523–5240

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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 88-159]

Mediterranean Fruit Fly; Addition to the Quarantined Areas

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by adding an additional portion of Los Angeles County in California to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States.

DATES: Interim rule effective October 14, 1988. Consideration will be given only to comments postmarked or received on or before December 19, 1988.

ADDRESSES: Send an original and three copies of written comments to Regulatory Analysis and Development, APHIS, USDA, Room 728, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket Number 88-159. Comments received may be inspected at USDA, Room 1141, South Building, 14th and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays.

FOR FURTHER INFORMATION CONTACT: Eddie Elder, Chief Operations Officer, Domestic and Emergency Operations, PPQ, APHIS, USDA, Room 661, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, 301-436-6365.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables, especially citrus fruits. The Mediterranean fruit fly can cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

A document published in the Federal Register on August 8, 1988, (53 FR 29633-29639, Docket Number 88-127) established the Mediterranean fruit fly regulations (7 CFR 301.78 *et seq.*; referred to below as the regulations). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Mediterranean fruit fly to noninfested areas.

The regulations, among other things, designated portions of Los Angeles County in California as a quarantined area. This area remains infested with Mediterranean fruit fly.

Recent trapping surveys by inspectors of California state and county agencies and by inspectors of Plant Protection and Quarantine, a unit within the Animal and Plant Health Inspection Service, U.S. Department of Agriculture, reveal that another portion of Los Angeles County, California, is also infested with the Mediterranean fruit fly.

Specifically, inspectors collected more than 40 adult Mediterranean fruit flies near Culver City, California, during the period of September 26 to October 3, 1988. During this period, inspectors also found 36 Mediterranean fruit fly larvae infesting fruit in the same area.

The regulations in § 301.78-3 provide that the Administrator of the Animal and Plant Health Inspection Service shall list as a quarantined area each state, or each portion of a state, in which the Mediterranean fruit fly has been found by an inspector, in which the Administrator has reason to believe the Mediterranean fruit fly is present, or that the Administrator considers necessary to regulate because of its proximity to the Mediterranean fruit fly or its inseparability for quarantine enforcement purposes from localities where Mediterranean fruit fly has been found.

In accordance with these criteria, we are designating as a quarantined area the following area in Los Angeles County in California:

Los Angeles County

That portion of the county in the Culver City area bounded by a line beginning at the intersection of Sunset Boulevard and Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Wilshire Boulevard; then southwest along Wilshire Boulevard to its intersection with Bundy Drive; then southeast along Bundy Drive to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Jefferson Boulevard; then northeast along Jefferson Boulevard to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Florence Avenue; then east along Florence Avenue to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with U.S. Highway 101; then northwest along U.S. Highway 101 to its intersection with Hollywood Boulevard; then west along Hollywood Boulevard to its intersection with Laurel Canyon Boulevard; then south along Laurel Canyon Boulevard to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to the point of beginning.

There does not appear to be any reason to designate other quarantined areas in California other than the area specified above. California has adopted and is enforcing regulations imposing restrictions on the intrastate movement of the regulated articles that are equivalent to those imposed on the interstate movement of regulated articles under this subpart.

Emergency Action

James W. Glosser, Administrator of the Animal and Plant Health Inspection Service, has determined that an emergency situation exists, which warrants publication of this interim rule without prior opportunity for public comment. Because the Mediterranean fruit fly could be spread to noninfested areas of the United States, it is necessary to act immediately to prevent its spread.

Since prior notice and other public procedures with respect to this rule are impracticable and contrary to the public interest under these emergency conditions, there is good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments postmarked or received within 60 days

of publication of this rule in the **Federal Register**. Any amendments we make to this rule as a result of these comments will be published in the **Federal Register** following the close of the comment period.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this rule will have an effect on the economy of less than $100 million; will not cause a major increase in costs or prices for consumers, individual industries, Federal, state, or local government agencies, or geographic regions; and will not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12291.

This regulation affects the interstate movement of regulated articles from a portion of Los Angeles County, California. It appears that there is very little commercial activity that may be affected by this rule in the quarantined area. The small entities that may be affected by this regulation appear to consist of approximately 85 nurseries, 50 open fruit stands, 5 community gardens, 10 regularly scheduled swap meets (flea markets), 10 caterers who send lunch "chuckwagons" to job sites in the quarantined area, 200 mobile vendors, 7 wholesale distributors, and 20 dooryard fruit producers (producers who contract residentially-produced fruit for commercial sale).

It appears that most of these small entities sell regulated articles primarily for local intrastaste, not interstate, markets. Also, a number of these small entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities will be minimal.

Further, the conditions in the Mediterranean fruit fly regulations and the treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Paperwork Reduction Act

The regulations in this subpart contain no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507 *et seq.*).

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with state and local officials. (See 7 CFR Part 3015, Subpart V).

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases, Plant pests, Plants (Agriculture), Quarantine, Transportation, Mediterranean fruit fly, Incorporation by reference.

Accordingly, 7 CFR Part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR Part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3(c), the designation of the quarantined areas in Los Angeles County, California, is amended by adding a new paragraph as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

Los Angeles County

* * * * *

That portion of the county in the Culver City area bounded by a line beginning at the intersection of Sunset Boulevard and Interstate Highway 405; then southeast along Interstate Highway 405 to its intersection with Wilshire Boulevard; then southwest along Wilshire Boulevard to its intersection with Bundy Drive; then southeast along Bundy Drive to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Jefferson Boulevard; then northeast along Jefferson Boulevard to its intersection with Centinella Avenue; then southeast along Centinella Avenue to its intersection with Florence Avenue; then east along Florence Avenue to its intersection with Vermont Avenue; then north along Vermont Avenue to its intersection with U.S. Highway 101; then northwest along U.S. Highway 101 to its intersection with Hollywood Boulevard; then west along Hollywood Boulevard to its intersection with Laurel Canyon Boulevard; then south along Laurel Canyon Boulevard to its intersection with Sunset Boulevard; then southwest along Sunset Boulevard to the point of beginning.

* * * * *

Done at Washington, DC, this 14th day of October, 1988.

Billy G. Johnson,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 88–24189 Filed 10–18–88; 8:45 am]

BILLING CODE 3410–34–M

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Part 212

[INS Number: 1102–88]

Documentary Requirements; Nonimmigrants; Waivers; Admission of Certain Inadmissible Aliens; Parole

AGENCY: Immigration and Naturalization Service (INS), Justice.

ACTION: Final rule.

SUMMARY: This rule expands the coverage of the waiver of inadmissibility of mentally retarded aliens seeking entry as nonimmigrants. Presently, a blanket waiver is provided in the case of Canadian nationals and alien residents of Canada having a common nationality with Canadians. Based on experience in administering the present limited Canadian waiver, it is the Service's view that the same blanket waiver should be made available to all nationalities. This rule will facilitate travel of mentally retarded individuals and their families.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Janice B. Podolny, Associate General Counsel, Room 7048, Immigration and Naturalization Service, 425 I Street NW., Washington, DC 20536, Telephone: (202) 633–1260.

SUPPLEMENTARY INFORMATION: The Immigration and Naturalization Service published a notice of proposed rulemaking on February 5, 1988 to provide a blanket waiver of inadmissibility for mentally retarded aliens seeking admission as nonimmigrants, if accompanied by a family member or guardian who would be responsible for the individual. The proposed rule was published at 53 FR 3403, with a 60 day comment period which closed on April 5, 1988. One comment was received by the Service. The commenter requested that INS

broaden the definition of guardian to mean someone who has authority or control over the person for a limited duration of time, such as school administrator leading his or her students on a trip to the United States, rather than limiting it to a permanent legal guardian, whose guardianship authority must be established by a court or other legal authority. The plain language in the rule makes it clear that the guardian need only be responsible for the alien during the period of admission authorized. Thus the commenter's example of a school administrator escorting students on a trip to the United States would satisfy the rule's requirement that the alien be accompanied by a guardian, assuming that the school administrator was responsible for the alien in question during the period of admission authorized. In addition, an amendment to the Act (section 7(a)) dated November 14, 1986, Pub. L. 99-653, 100 Stat. 3655, repealed section 212(a)(24); therefore, reference to section 212(a)(24) of the Act which appeared in the proposed rule was not included in the final rule.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant economic impact on a substantial number of small entities. This is not a major rule as defined in section 1(b) of E.O. 12991, nor does this rule have federalism implications warranting the preparation of a Federal Assessment in accordance with E.O. 12612.

List of Subjects in 8 CFR Part 212

Administrative practice and procedure, Aliens, Discretionary relief, Health.

Accordingly Title 8, of the Code of Federal Regulations is amended as follows:

PART 212—DOCUMENTARY REQUIREMENTS: NONIMMIGRANTS; WAIVERS; ADMISSION OF CERTAIN INADMISSIBLE ALIENS; PAROLE

1. The authority citation for Part 212 is revised to read as follows:

Authority: 8 U.S.C. 1101, 1102, 1103, 1182, 1184, 1187, 1225, 1226, 1228, 1252.

2. Section 212.4 is amended by revising paragraph (e) as follows:

§ 212.4 Applications for the exercise of discretion under section 212(d)(3).

* * * * *

(e) *Inadmissibility under section 212(a)(1).* Pursuant to the authority contained in section 212(d)(3) of the Act, the temporary admission of a nonimmigrant visitor is authorized notwithstanding inadmissibility under section 212(a)(1) of the Act, if such alien is accompanied by a member of his/her family, or a guardian who will be responsible for him/her during the period of admission authorized.

* * * * *

Dated: July 18, 1988.

Richard E. Norton,

Associate Commissioner, Examinations.

[FR Doc. 88-24095 Filed 10-18-88; 8:45 am]

BILLING CODE 4410-10-M

FARM CREDIT ADMINISTRATION

12 CFR Part 618

General Provisions; Member Insurance; Effective Date

AGENCY: Farm Credit Administration.

ACTION: Notice of effective date.

SUMMARY: The Farm Credit Administration (FCA) published final regulations under Part 618, September 13, 1988 (53 FR 35303). The final regulations to Part 618 relate to the authority of Farm Credit Banks (excluding banks for cooperatives) and associations to sell credit-related forms of insurance to their members and borrowers, on an optional basis. In accordance with 12 U.S.C. 2252, the effective date of the final rule is 30 days from the date of publication in the **Federal Register** during which either or both Houses of Congress are in session. Based on the records of the sessions of Congress, the effective date of the regulations is October 13, 1988.

EFFECTIVE DATE: October 13, 1988.

FOR FURTHER INFORMATION:

Dennis Carpenter, Senior Credit Specialist, Financial Analysis and Standards Division, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4498

or

Joanne P. Ongman, Attorney, Office of General Counsel, Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102-5090, (703) 883-4020. TDD (703) 883-444.

(12 U.S.C. 2252(a)(9) and (10))

Dated: October 14, 1988.

David A. Hill,

Secretary, Farm Credit Administration.

[FR Doc. 88-24193 Filed 10-18-88; 8:45 am]

BILLING CODE 6705-01-M

FEDERAL TRADE COMMISSION

16 CFR Part 2

Nonadjudicative Procedures

AGENCY: Federal Trade Commission.

ACTION: Final rule.

SUMMARY: The Commission has approved two procedural amendments to Rule 2.51(a) of its Rules of Practice and Procedure. The rule governs requests to reopen and modify final orders. The first amendment provides that such requests must be supported by affidavit(s). Under section 5(b) of the FTC Act, 15 U.S.C. 45(b), requests to reopen must make a "satisfactory showing" of the basis for relief. The Commission has concluded that affidavits are required to support factual assertions made in requests filed under section 5(b). The second amendment provides that requests to reopen must contain at the time they are filed "[a]ll information and material that the requester wishes the Commission to consider." This change is intended to ensure that all the information filed in support of the request is available to the public during the public comment period, and that the entire 120-day statutory period is available for Commission consideration of all submitted materials relevant to the request.

EFFECTIVE DATE: The rule is effective October 19, 1988, and applies to requests to reopen and modify filed after that date.

FOR FURTHER INFORMATION CONTACT:

Elliot Feinberg, Bureau of Competition, Federal Trade Commission, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580, (202) 326-2687.

SUPPLEMENTARY INFORMATION: The Commission has clarified the requirements of Rule 2.51(b) of its Rules of Practice regarding the filing of requests to reopen and modify final orders. Commission orders represent the final resolution of the Commission's law enforcement efforts. Before reopening and modifying such orders, the Commission wishes to ensure that requesters meet the tests of section 5(b) of the FTC Act and Commission Rule 2.51(b), which require a petitioner to make a "satisfactory showing" that reopening and modification are mandated by changed conditions or that reopening and modification are in the public interest. Requests to reopen orders must not only allege facts that, if true, would constitute the necessary showing, but must also credibly demonstrate that the factual assertions

are reliable. The amended rule therefore specifically requires that requesters provide one or more affidavits to support facts alleged in petitions to reopen and modify orders. This amendment will not only help the Commission in its decision making process but, by clarifying the applicable standard, aid requesters in presenting meritorious cases. In the past, the Commission required substantiation for material factual allegations contained in these petitions. This amendment specifies the procedural method for substantiating factual assertions.

The Commission further wishes to ensure that the entire 120-day statutory period within which the Commission must act (see 15 U.S.C. 5(b)) is available for consideration of all submitted materials relevant to the request. The Commission seeks also to assure that all submitted information is available to the public during the 30-day comment period applicable to petitions to reopen. See Rule 2.51(c). Therefore, the second amendment to Rule 2.51(b) provides that all the material that the requester wishes the Commission to consider must be contained in the request at the time of filing. This amendment will promote more knowledgeable and relevant public comments and thus increase their utility to the Commission. This amendment also reflects procedures contained in the Commission's July 1984 "Statement of Policy Concerning Supplementation of Requests to Reopen." Under that statement, which discusses in greater detail how the Commission views supplementation of requests to reopen, a requester wishing to supplement its request to reopen must generally withdraw the request and file a supplemented version, thus restarting the statutory 120-day time period.[1]

For these reasons, the Commission has amended Rule 2.51(b) of its Rules of Practice to require that requests to reopen and modify a final order be supported by affidavit(s) and to make clear that requests to reopen must be complete when filed.

List of Subjects in 16 CFR Part 2

Administrative practice and procedure, Requests to reopen.

16 CFR Part 2 is amended to read as follows:

PART 2—NONADJUDICATIVE PROCEDURES

1. The authority for Part 2 continues to read as follows:

Authority: Sec. 6, 38 Stat. 721 (15 U.S.C. 46).

2. Section 2.51(b) is revised to read as follows:

§ 2.51 Requests to reopen.

(a) * * *

(b) *Contents.* A request under this section shall contain a satisfactory showing that changed conditions of law or fact require the rule or order to be altered, modified or set aside, in whole or in part or that the public interest so requires. This requirement shall not be deemed satisfied if a request is merely conclusory or otherwise fails to set forth by affidavit(s) specific facts demonstrating in detail the nature of the changed conditions and the reasons why these changed conditions or the public interest require the requested modifications of the rule of order. Each affidavit shall set forth facts that would be admissible in evidence and shall show that the affiant is competent to testify to the matters stated therein. All information and material that the requester wishes the Commission to consider shall be contained in the request at the time of filing.

* * * * *

By direction of the Commission.

Donald S. Clark,

Secretary.

Statement of Policy Concerning Supplementation of Requests To Reopen

The Federal Trade Commission is releasing this statement of policy to clarify for the legal and business communities the Commission's treatment of supplemental information provided to support requests filed pursuant to Rule 2.51 of the Commission's Rules of Practice for the purpose of modifying final orders to cease and desist. Section 5(b) of the Federal Trade Commission Act and Rule 2.51 require the Commission to act on requests to reopen within 120 days of the time of filing. Rule 2.51 further specifies that such requests must set forth specific facts demonstrating in detail the nature of any changed conditions alleged and the reasons why these changed conditions require the requested modifications.[2] Given the limited time for review and the need to evaluate fully the facts and arguments presented, the Commission generally will not accept or consider additional information to support a request to reopen supplied by the requester after the date of filing, unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented, thus restarting the statutory time period.

Additionally, the Commission would be deprived of the full benefits of public comments were it to accept and consider materials supplementing a request to reopen after comments on the original request had been filed. The Commission's purpose in seeking such comments, which is to aid it in making informed decisions, might be hindered to the extent persons commenting on a given request had not reviewed all of the facts and arguments on which the request is premised. Moreover, the absence of such facts and arguments from what is placed on the public record might affect even decisions on whether to comment. Therefore, when a pending request to reopen is supplemented, not only must the 120-day statutory period for the Commission's consideration of the request be restarted, but the entire refiled request, as supplemented, must be placed on the public record for comments as provided in Rule 2.51(c).[3]

The Commission recognizes that comments filed in response to requests to reopen may sometimes raise new issues which those requesting modification may want to address. Therefore, the Commission will consider replies by requesters that are limited in scope to issues raised by such comments, provided that any reply to comments on a given request is filed within ten days of the close of the comment period. However, if a reply exceeds the scope of the comments, the Commission will not consider the reply unless the requester states in writing that the Commission should consider the request withdrawn and refiled as supplemented by the reply. Moreover, the Commission will not reopen an order where an essential element of the "satisfactory showing" that modification is required (as described in Rule 2.51) was not contained in the original request, but only in a reply to comments on the original request. Therefore, unless the Commission requires otherwise

[1] The full text of the Commission's Statement is included as an appendix to this notice.

[2] While Section 5(b) of the Federal Trade Commission Act provides for requests to reopen solely on the basis that changed conditions of law or fact require that an order be modified, the section also provides that the Commission may modify orders on its own motion if, in the opinion of the Commission, the public interest so requires. Thus, Rule 2.51 invites respondents requesting reopening to address public interest considerations that may favor reopening as well. As with requests premised on changed conditions, such requests must demonstrate in detail the reasons why the public interest may require the desired modifications.

[3] Rule 2.51(c) recognizes that the Commission's interest in receiving public comments is subject to the rights of requesters, pursuant to the Federal Trade Commission Act, to maintain the confidentiality of trade secrets and financial or commercial information that is privileged or confidential.

when a pending request to reopen is supplemented, not only must the 120 day statutory period for the Commission's consideration be restarted, but the entire refiled request, as supplemented, will generally be placed on the public record for comments as provided in Rule 2.51(c).

This statement of policy does not preclude the Commission's staff from asking requesters to provide documents or other additional information in order to clarify the arguments and factual claims made in connection with the requests to reopen. The staff may, at any time, also seek from third parties information concerning such requests. The supplying of such information will not affect the Commission's obligation to decide a request within 120 days of the date it was filed. However, where supplemental information supplied by a Requester is necessary to show that changed conditions or the public interest require modification, refiling of the request will be necessary. Generally, supplemental information will require refiling when the Request does not address an issue necessary to finding that modification is required or when the information in the request is too conclusory to warrant modification of a final order. The determination whether supplemental information is essential to show that modification is required will depend on the facts of the particular case and necessarily must be decided on a case-by-case basis. Of course, requesters retain the right to have the Commission act on requests to reopen as originally filed, without consideration of any additional information.

In summary, except as provided above the Commission will not consider supplemental information provided after a request to reopen has been filed unless the requester, in writing, asks the Commission to consider the request withdrawn and refiled as of the time the supplemental information is submitted to the Commission.[4] In that case, the Commission will again place the request, including the supplementary materials, on the public record in accordance with Rule 2.51(c). The Commission will consider the original petition and supplementary materials, any additional public comments filed in response to the original petition as well as any comments filed in response to the amended request. The Commission will also consider, without requiring the refiling of a request, a reply by the requester made in response to any comments if it is filed within 10 days of the close of the comment period and if it does not exceed the scope of the comments.[5]

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BILLING CODE 6750-01-M

[4] In the event a requester should, during the 120-day period, decide to modify its request to reopen to seek only part of the relief originally requested, while rescinding other parts of the request, refiling of the request will not be necessary unless the Commission determines that it would be in the public interest to do so.

[5] This statement of policy is intended only to provide general guidance and information. When time, circumstances, or the public interest require, this statement may be amended or superseded by subsequent Commission action without prior notice. This statement is not a rule or regulation. It does not modify the scope or coverage of any provision of the Federal Trade Commission Act or the Commission's Rules of Practice.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 37

[Docket No. RM87-35-000]

Generic Determination of Rate of Return on Common Equity for Public Utilities

October 14, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of benchmark rate of return on common equity for public utilities.

SUMMARY: In accordance with § 37.5 of its regulations, the Federal Energy Regulatory Commission, by its designee, the Director of the Office of Economic Policy, issues the update to the "advisory" benchmark rate of return on common equity applicable to rate filings made during the period November 1988 through January 1989. This benchmark rate is set at 12.44 percent.

EFFECTIVE DATE: November 1, 1988.

FOR FURTHER INFORMATION CONTACT: Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, (202) 357-8283.

SUPPLEMENTARY INFORMATION:

Benchmark Rate of Return on Common Equity for Public Utilities

Issued October 14, 1988.

On January 27, 1988, the Federal Energy Regulatory Commission (Commission) issued a final rule which readopted the quarterly indexing procedure for establishing and updating the benchmark rate of return on common equity applicable to electric rate filings.[1] Based on this procedure, the Commission, by its designee, the Director of the Office of Economic Policy, determines that the benchmark rate of return on common equity applicable to rate filings made during the period November 1, 1988 through January 31, 1989, is 12.44 percent.

Section 37.9 of the Commission's regulations [2] requires that the quarterly benchmark rate of return be set equal to the average cost of common equity for the jurisdictional operations of public utilities. This average cost is based on the average of the median dividend yields for the two most recent calendar quarters for a sample of 99 utilities.[3] The average yield is used in the following formula with fixed adjustment factors (determined in the most recent annual proceeding) to determine the cost rate:

$$k_t = 1.02\ Y_t + 4.36$$

where k_t is the average cost of common equity and Y_t is the average dividend yield.

The attached appendix provides the supporting data for this update. The median dividend yields for the 99-company sample of utilities for the second an third quarters of 1988 are 7.91 and 7.92 percent, respectively. The average yield for those two quarters is 7.92 percent. Use of the average dividend yield in the above formula produces an average cost of common equity of 12.44 percent.

This notice supplements the generic rate of return rule announced in Order No. 489, issued January 29, 1988 and effective on February 1, 1988.

List of Subjects in 18 CFR Part 37

Electric power rates, Electric utilities, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission amends Part 37, Chapter I, Title 18 of the *Code of Federal Regulations*, as set forth below, effective November 1, 1988.

Bernard W. Tenenbaum,

Acting Director, Office of Economic Policy.

[1] Generic Determination of Rate of Return on Common Equity for Public Utilities, Order No. 489, 53 FR 3342 (February 5, 1988), III FERC Stats. and Regs. 30,795 (January 29, 1988).

[2] 18 CFR 37.9 (1987).

[3] As a result of the acquisition of Savannah Electric and Power Company by the Southern Company, the Commission has reduced the number of companies in the sample for the most recent quarter to 99. It has made this change in accordance with the criteria for inclusion in the sample specified in 18 CFR 37.9(c) (1987).

PART 37—GENERIC DETERMINATION OF RATE OF RETURN ON COMMON EQUITY FOR PUBLIC UTILITIES

1. The authority citation for Part 37 continues to read as follows:

Authority: Federal Power Act, 16 U.S.C. 791a–825r (1982); Department of Energy Organization Act, 42 U.S.C. 7101–7352 (1982).

2. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Quarterly indexing procedure

* * * * *

(d) *Table of Quarterly Benchmark Rates of Return.*

The following table presents the quarterly benchmark rates of return on common equity:

Benchmark applicability period	Dividend increase adjustment factor	Expected growth adjustment factor	Current dividend yield	Cost of common equity	Benchmark rate of return
(t)	(a)	(b)	(Y_t)	(k_t)	
2/1/86–4/30/86	1.02	4.54	9.03	13.75	13.75
5/1/86–7/31/86	1.02	4.54	8.37	13.08	13.25
8/1/86–10/31/86	1.02	4.54	7.49	12.18	12.75
11/1/86–1/31/87	1.02	4.54	6.75	11.43	12.25
2/1/87–4/30/87	1.02	4.63	6.44	11.20	11.20
5/1/87–7/31/87	1.02	4.63	6.54	11.30	11.30
8/1/87–10/31/87	1.02	4.63	6.97	11.74	11.74
11/1/87–1/31/88	1.02	4.63	7.49	12.27	12.27
2/1/88–4/30/88	1.02	4.36	7.90	12.42	12.42
5/1/88–7/31/88	1.02	4.36	7.99	12.51	12.51
8/1/88–10/31/88	1.02	4.36	7.84	12.36	12.36
11/1/88–1/31/89	1.02	4.36	7.92	12.44	12.44

Note: The appendix will not be published in *Code of Federal Regulations*

Appendix

Exhibit No.	Title
1	Initial sample of utilities.
2	Utilities excluded from the sample for the indicated quarter due to either zero dividends or a cut in dividends for this quarter or the prior three quarters.
3	Annualized dividend yields for the indicated quarter for utilities retained in the sample.

Source of data: Standard and Poor's Compustat Services, Inc., Utility COMPUSTAT II Quarterly Data Base.

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Exhibit 1

Sample of Utilities

Utility	Ticker Symbol	Industry Code	Utility	Ticker Symbol	Industry Code
ALLEGHENY POWER SYSTEM	AYP	4911	MIDDLE SOUTH UTILITIES	MSU	4911
AMERICAN ELECTRIC POWER	AEP	4911	MIDWEST ENERGY CO	MWE	4931
ATLANTIC ENERGY INC	ATE	4911	MINNESOTA POWER & LIGHT	MPL	4911
BALTIMORE GAS & ELECTRIC	BGE	4931	MONTANA POWER CO	MTP	4931
BLACK HILLS CORP	BKH	4911	NECO ENTERPRISES INC	NPT	4911
BOSTON EDISON CO	BSE	4911	NEVADA POWER CO	NVP	4911
CAROLINA POWER & LIGHT	CPL	4911	NEW ENGLAND ELECTRIC SYST	NES	4911
CENTERIOR ENERGY CORP	CX	4911	NEW YORK STATE ELEC & GAS	NGE	4931
CENTRAL & SOUTH WEST CORP	CSR	4911	NIAGARA MOHAWK POWER	NMK	4931
CENTRAL HUDSON GAS & ELEC	CNH	4931	NIPSCO INDUSTRIES INC	NI	4931
CENTRAL ILL PUBLIC SERVIC	CIP	4931	NORTHEAST UTILITIES	NU	4911
CENTRAL LOUISIANA ELECTRI	CNL	4911	NORTHERN STATES POWER-MN	NSP	4931
CENTRAL MAINE POWER CO	CTP	4911	OHIO EDISON CO	OEC	4911
CENTRAL VERMONT PUB SERV	CV	4911	OKLAHOMA GAS & ELECTRIC	OGE	4911
CILCORP INC	CER	4931	ORANGE & ROCKLAND UTILITI	ORU	4931
CINCINNATI GAS & ELECTRIC	CIN	4931	PACIFIC GAS & ELECTRIC	PCG	4931
CMS ENERGY CORP	CMS	4931	PACIFICORP	PPW	4931
COMMONWEALTH EDISON	CWE	4911	PENNSYLVANIA POWER & LIGH	PPL	4911
COMMONWEALTH ENERGY SYSTE	CES	4931	PHILADELPHIA ELECTRIC CO	PE	4931
CONSOLIDATED EDISON OF NY	ED	4931	PINNACLE WEST CAPITAL COR	PNW	4911
DELMARVA POWER & LIGHT	DEW	4931	PORTLAND GENERAL CORP	PGN	4911
DETROIT EDISON CO	DTE	4911	POTOMAC ELECTRIC POWER	POM	4911
DOMINION RESOURCES INC-VA	D	4931	PSI HOLDINGS INC	PIN	4911
DPL INC	DPL	4931	PUBLIC SERVICE CO OF COLO	PSR	4931
DUKE POWER CO	DUK	4911	PUBLIC SERVICE CO OF N H	PNH	4911
DUQUESNE LIGHT CO	DQU	4911	PUBLIC SERVICE CO OF N ME	PNM	4931
EASTERN UTILITIES ASSOC	EUA	4911	PUBLIC SERVICE ENTERPRISE	PEG	4931
EMPIRE DISTRICT ELECTRIC	EDE	4911	PUGET SOUND POWER & LIGHT	PSD	4911
FITCHBURG GAS & ELEC LIGH	FGE	4931	ROCHESTER GAS & ELECTRIC	RGS	4931
FLORIDA PROGRESS CORP	FPC	4911	SAN DIEGO GAS & ELECTRIC	SDO	4931
FPL GROUP INC	FPL	4911	SCANA CORP	SCG	4931
GENERAL PUBLIC UTILITIES	GPU	4911	SCECORP	SCE	4911
GREEN MOUNTAIN POWER CORP	GMP	4911	SIERRA PACIFIC RESOURCES	SRP	4931
GULF STATES UTILITIES CO	GSU	4911	SOUTHERN CO	SO	4911
HAWAIIAN ELECTRIC INDS	HE	4911	SOUTHERN INDIANA GAS & EL	SIG	4931
HOUSTON INDUSTRIES INC	HOU	4911	ST JOSEPH LIGHT & POWER	SAJ	4931
I E INDUSTRIES INC	IEL	4931	TECO ENERGY INC	TE	4911
IDAHO POWER CO	IDA	4911	TEXAS UTILITIES CO	TXU	4911
ILLINOIS POWER CO	IPC	4931	TNP ENTERPRISES INC	TNP	4911
INTERSTATE POWER CO	IPW	4931	TUCSON ELECTRIC POWER CO	TEP	4911
IOWA RESOURCES INC	IOR	4911	UNION ELECTRIC CO	UEP	4911
IOWA-ILLINOIS GAS & ELEC	IWG	4931	UNITED ILLUMINATING CO	UIL	4911
IPALCO ENTERPRISES INC	IPL	4911	UNITIL CORP	UTL	4911
KANSAS CITY POWER & LIGHT	KLT	4911	UTAH POWER & LIGHT	UTP	4911
KANSAS GAS & ELECTRIC	KGE	4911	UTILICORP UNITED INC	UCU	4931
KANSAS POWER & LIGHT	KAN	4931	WASHINGTON WATER POWER	WWP	4931
KENTUCKY UTILITIES CO	KU	4911	WISCONSIN ENERGY CORP	WEC	4931
LONG ISLAND LIGHTING	LIL	4931	WISCONSIN PUBLIC SERVICE	WPS	4931
LOUISVILLE GAS & ELECTRIC	LOU	4931	WPL HOLDINGS INC	WPH	4931
MAINE PUBLIC SERVICE	MAP	4911			

N = 99

Exhibit 2

Utilities Excluded from the Sample for the Indicated Quarter
Due to Either Zero Dividends or a Cut in the Dividends for
This Quarter or the Prior Three Quarters

---------- Year = 88 Quarter = 3 ----------

Ticker Symbol	Utility	Reason for Exclusion
CX	CENTERIOR ENERGY CORP	Dividend rate was reduced for the quarter CALENDAR 88Q2
CNH	CENTRAL HUDSON GAS & ELEC	Dividend rate was reduced for the quarter CALENDAR 88Q1
CMS	CMS ENERGY CORP	Dividend rate was zero for quarter CALENDAR 88Q3
GSU	GULF STATES UTILITIES CO	Dividend rate was zero for quarter CALENDAR 88Q3
LIL	LONG ISLAND LIGHTING	Dividend rate was zero for quarter CALENDAR 88Q3
MSU	MIDDLE SOUTH UTILITIES	Dividend rate was zero for quarter CALENDAR 88Q3
NGE	NEW YORK STATE ELEC & GAS	Dividend rate was reduced for the quarter CALENDAR 88Q1
PCG	PACIFIC GAS & ELECTRIC	Dividend rate was reduced for the quarter CALENDAR 88Q3
PIN	PSI HOLDINGS INC	Dividend rate was zero for quarter CALENDAR 88Q3
PNH	PUBLIC SERVICE CO OF N H	Dividend rate was zero for quarter CALENDAR 88Q3
PNM	PUBLIC SERVICE CO OF N ME	Dividend rate was reduced for the quarter CALENDAR 88Q2

N = 11

Exhibit 3

Annualized Dividend Yields for the Indicated Quarter for Utilities Retained in the Sample

Year = 88 Quarter = 3

Ticker Symbol	Price,1st Month of Qtr-High	Price,1st Month of Qtr-Low	Price,2nd Month of Qtr-High	Price,2nd Month of Qtr-Low	Price,3rd Month of Qtr-High	Price,3rd Month of Qtr-Low	Average Price	Dividends Annual Rate	Annualized Dividend Yield
AEP	29.000	27.000	28.875	26.125	28.125	26.625	27.625	2.370	8.579
ATE	33.625	32.375	33.500	31.875	33.625	32.000	32.833	2.760	8.406
AYP	37.875	36.500	38.250	36.625	38.375	37.125	37.458	3.000	8.009
BGE	32.750	30.375	32.375	30.000	32.125	30.250	31.312	2.000	6.387
BKH	28.125	27.000	27.875	26.500	28.250	26.750	27.417	1.400	5.106
BSE	15.250	14.500	15.000	14.000	16.125	14.250	14.854	1.820	12.252
CER	34.250	31.625	32.875	31.000	32.875	31.125	32.292	2.400	7.432
CES	31.000	29.375	30.500	29.250	33.000	29.500	30.437	2.800	9.199
CIN	28.000	26.250	26.750	25.375	26.875	26.000	26.542	2.240	8.440
CIP	21.875	21.125	21.750	20.250	21.875	20.750	21.271	1.760	8.274
CNL	33.125	31.000	32.375	31.250	32.875	32.000	32.104	2.320	7.226
CPL	34.500	32.500	34.250	32.625	35.875	33.875	33.937	2.760	8.133
CSR	32.125	30.500	31.750	29.875	31.750	30.000	31.000	2.440	7.871
CTP	18.000	17.000	18.125	16.875	18.375	17.250	17.604	1.480	8.407
CV	25.500	23.625	25.250	23.625	25.250	24.000	24.542	1.980	8.068
CWE	30.125	26.750	30.125	28.125	31.125	29.750	29.333	3.000	10.227
D	43.750	41.375	43.000	41.375	43.875	41.750	42.521	3.080	7.244
DEW	18.625	17.000	17.625	16.875	17.500	16.750	17.396	1.460	8.393
DPL	26.750	25.500	26.750	24.500	26.500	24.875	25.812	2.160	8.368
DQU	15.500	14.875	15.500	15.000	15.875	15.250	15.333	1.200	7.826
DTE	14.625	13.000	15.125	14.000	15.500	14.375	14.437	1.680	11.636
DUK	46.250	44.250	46.000	42.625	45.750	42.875	44.625	2.960	6.633
ED	44.375	43.000	45.125	42.125	44.875	42.375	43.646	3.200	7.332
EDE	30.375	29.125	29.500	28.875	29.375	28.750	29.333	2.120	7.227
EUA	26.125	24.250	26.000	24.500	29.000	25.500	25.896	2.400	9.268
FGE	27.875	26.250	26.250	25.500	26.375	25.500	26.292	1.720	6.542
FPC	35.125	33.500	35.000	34.000	34.875	33.750	34.375	2.480	7.215
FPL	30.750	29.250	30.625	29.125	31.375	29.500	30.104	2.200	7.308
GMP	24.500	23.750	24.500	23.000	25.375	23.500	24.104	1.920	7.965
GPU	35.625	34.125	35.250	32.750	35.500	33.875	34.521	1.200	3.476
HE	30.625	28.125	28.875	28.000	29.250	28.375	28.875	1.920	6.649
HOU	31.875	30.500	32.125	28.625	29.875	28.500	30.250	2.960	9.785
IDA	22.500	20.500	22.125	20.250	22.625	21.000	21.500	1.800	8.372
IEL	23.375	22.625	23.875	22.500	24.375	23.000	23.292	2.020	8.673
IOR	17.250	15.500	16.875	15.750	18.000	16.125	16.583	1.660	10.010
IPC	19.500	18.250	19.000	18.000	20.375	18.375	18.917	2.640	13.956
IPL	23.375	22.875	23.875	22.375	23.250	21.875	22.937	1.640	7.150
IPW	21.875	20.875	21.875	20.375	22.250	21.250	21.417	1.960	9.152
IWG	37.750	35.875	36.875	35.250	38.875	36.125	36.792	3.180	8.643
KAN	25.125	23.750	24.625	23.250	23.875	22.750	23.896	1.720	7.198
KGE	19.750	18.500	20.125	18.125	20.125	18.750	19.229	1.480	7.697
KLT	29.500	27.875	30.000	28.625	30.250	28.500	29.125	2.440	8.378
KU	19.125	17.625	18.500	17.500	18.500	17.625	18.146	1.340	7.385
LOU	34.500	31.625	32.625	31.125	35.000	32.375	32.875	2.720	8.274

Exhibit 3 (continued)

Annualized Dividend Yields for the Indicated Quarter for Utilities Retained in the Sample

Year = 88 Quarter = 3

Ticker Symbol	Price,1st Month of Qtr-High	Price,1st Month of Qtr-Low	Price,2nd Month of Qtr-High	Price,2nd Month of Qtr-Low	Price,3rd Month of Qtr-High	Price,3rd Month of Qtr-Low	Average Price	Dividends Annual Rate	Annualized Dividend Yield
MAP	31.375	30.625	37.250	30.875	37.125	35.375	33.771	2.600	7.699
MPL	25.000	23.375	25.000	23.750	24.875	23.875	24.312	1.720	7.075
MTP	34.750	33.250	34.750	33.875	36.500	34.375	34.583	2.680	7.749
MWE	19.500	18.250	19.375	17.875	19.625	19.000	18.937	1.560	8.238
NES	23.875	22.250	24.000	22.625	24.000	22.500	23.208	2.040	8.790
NI	11.875	10.500	11.500	10.875	12.125	11.125	11.333	0.600	5.294
NMK	15.375	13.250	13.750	12.875	14.125	13.500	13.812	1.200	8.688
NPT	19.250	18.625	18.500	17.875	18.125	17.750	18.354	1.500	8.173
NSP	31.375	30.000	31.750	30.125	32.875	31.000	31.187	2.120	6.798
NU	20.000	18.625	19.625	18.250	20.625	18.625	19.292	1.760	9.123
NVP	21.250	19.500	20.875	19.000	20.875	19.500	20.167	1.520	7.537
OEC	19.000	17.750	18.875	17.875	18.750	17.875	18.354	1.960	10.679
OGE	32.250	29.875	31.500	29.875	32.875	31.000	31.229	2.280	7.301
ORU	31.250	29.250	30.125	28.500	30.625	29.500	29.875	2.260	7.565
PE	19.000	18.000	19.000	17.125	19.000	17.625	18.292	2.200	12.027
PEG	24.750	22.375	24.000	22.375	24.625	22.000	23.354	2.000	8.564
PGN	23.125	21.000	21.750	20.250	21.625	20.250	21.333	1.960	9.187
PNW	25.750	23.375	23.875	21.000	23.125	22.125	23.208	2.800	12.065
POM	22.875	20.375	21.000	20.000	21.000	20.000	20.875	1.380	6.611
PPL	36.375	34.000	35.625	33.750	35.875	34.625	35.042	2.760	7.876
PPW	36.625	33.500	35.250	34.000	35.875	34.625	34.979	2.640	7.547
PSD	19.625	18.375	19.125	18.000	19.500	18.500	18.854	1.760	9.335
PSR	22.375	21.375	22.000	19.500	22.000	20.875	21.354	2.000	9.366
RGS	18.250	17.500	18.000	16.375	17.875	17.125	17.521	1.500	8.561
SAJ	22.250	21.250	22.750	21.000	22.750	21.000	21.833	1.400	6.412
SCE	32.875	30.750	32.750	31.250	33.625	31.500	32.125	2.480	7.720
SCG	32.625	30.250	31.375	29.750	31.125	29.750	30.812	2.400	7.789
SDO	34.500	32.750	35.500	33.500	36.000	33.500	34.292	2.600	7.582
SIG	30.125	28.500	29.250	26.500	27.625	26.500	28.083	1.700	6.053
SO	23.500	21.875	22.750	21.375	21.875	20.375	21.958	2.140	9.746
SRP	23.500	21.625	22.125	20.875	22.500	21.125	21.958	1.760	8.015
TE	23.875	22.125	23.375	21.750	23.875	22.875	22.979	1.420	6.180
TEP	55.875	52.125	53.000	50.000	54.500	51.500	52.833	3.900	7.382
TNP	20.500	19.500	20.000	18.500	19.875	19.000	19.562	1.470	7.514
TXU	28.500	26.125	29.125	27.750	28.625	27.625	27.958	2.880	10.301
UCU	18.750	17.500	18.875	17.500	19.375	18.500	18.417	1.120	6.081
UEP	23.375	22.500	23.250	21.500	23.875	22.375	22.812	1.920	8.416
UIL	23.750	22.625	23.875	21.875	24.250	21.750	23.021	2.320	10.078
UTL	28.500	27.750	28.000	27.500	29.625	28.000	28.229	2.040	7.227
UTP	30.125	28.500	30.625	28.750	31.125	29.625	29.792	2.320	7.787
WEC	27.125	25.375	26.750	25.250	27.000	25.625	26.187	1.540	5.881
WPH	23.500	22.000	23.125	21.437	23.625	22.125	22.635	1.620	7.157
WPS	22.500	21.125	22.250	21.000	21.500	21.000	21.562	1.580	7.328
WWP	28.000	26.500	27.750	25.750	27.750	26.125	26.979	2.480	9.192

N = 88

[FR Doc. 88–24177 Filed 10–18–88; 8:45 am]

BILLING CODE 6717-01-C

18 CFR Parts 141, 260, and 357

[Docket No. RM88-18-000; Order No. 505]

Statement of Cash Flows To Replace Statement of Changes in Financial Position in FERC Annual Report Forms

Issued October 13, 1988.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Amendment of forms.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is amending its annual report forms for electric utilities (FERC Form Nos. 1 and 1-F), natural gas companies (FERC Form Nos. 2 and 2-A) and oil pipeline companies (FERC Form No. 6). The Commission is replacing the current "Statement of Changes in Financial Position," which is one of the basic financial statements in the annual report forms filed by companies subject to Commission regulation, with a "Statement of Cash Flows". The change in statement complies with the Financial Accounting Standards Board's (FASB) Statement of Financial Accounting Standards No. 95 (SFAS No. 95), issued in November 1987.

EFFECTIVE DATE: This order is effective November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Julia Lake White, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, (202) 357-8530.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in Room 1000 at the Commission's Headquarters, 825 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 357-8997. To access CIPS, set your communications software to use 300, 1200 or 2400 baud, full duplex, no parity, 8 data bits, and 1 stop bit. The full text of this order will be available on CIPS for 10 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in Room 1000, 825 North Capitol Street NE., Washington, DC 20426.

Before Commissioners: Martha O. Hesse, Chairman; Charles G. Stalon and Charles A. Trabandt.

I. Introduction

The Federal Energy Regulatory Commission (Commission) is amending its annual report forms for electric utilities, natural gas companies, and oil pipeline companies. The Commission is replacing the current "Statement of Changes in Financial Position," which is one of the basic financial statements in the annual report forms filed by companies subject to Commission regulation, with a "Statement of Cash Flows". The change in statements complies with the Financial Accounting Standards Board's (FASB)[1] Statement of Financial Accounting Standards No. 95 (SFAS No. 95), issued in November 1987. FASB requires a company to implement this change in financial statements for fiscal periods ending after July 15, 1988.

II. Background

FASB published SFAS No. 95 in response to problems associated with the statement of changes in financial position, which is a basic financial statement. These problems include the use of ambiguous terms, such as "funds", the lack of comparability due to a particular company's emphasis (*i.e.*, whether to emphasize cash, or cash and short-term investments or working capital), and differences resulting from the format of the statement (sources and uses format or activity format). Additionally, FASB intended to recognize an increased interest in a company's cash flows, that is, a company's cash receipts and cash payments during a reporting period, as a measure of liquidity.

On June 6, 1988, the Commission issued a notice of proposed rulemaking (NOPR) proposing to replace the current "Statement of Changes in Financial Position" in FERC Annual Report Form Nos. 1 and 1-F (electric utilities), 2 and 2-A (natural gas companies) and 6 (oil pipeline companies) with a "Statement of Cash Flows." [2] Rather than report total cash and noncash sources and applications of funds, the proposed statement would require a company to report detailed information about cash receipts and cash payments classified by operating, investing and financing activities.[3] The company would show a net cash provided or used total for each activity.

The Commission proposed to adopt the indirect method of reporting net cash flow from operating activities, rather than the direct method. FASB allows either the direct method (reporting cash flows by showing major classes of operating cash receipts and cash payments) or the indirect method (reconciliation of net income to net cash flow by specific adjustments to remove deferrals and accruals of receipts and payments and noncash items). While FASB encourages the use of the direct method, it permits reporting by either method. However, if the direct method is used, a company must also show in a separate schedule the reconciliation of net income to net cash flow. In its proposal, the Commission noted that by adopting the indirect method, a company would not need to separately report the reconciliation of net income to net cash flow which is required by the direct method. Additionally, the Commission believed the indirect method would be administratively easier for most companies.

Although SFAS No. 95 does not specifically address the Allowance for Funds Used During Construction (AFUDC), the Commission proposed to retain the equity portion of AFUDC (Account No. 419.1, Allowance for Other Funds Used During Construction) as a deduction from both net income and gross additions to plant. This type of reporting treats the equity portion of AFUDC as a noncash item, which is deducted from net income. The borrowed funds portion of AFUDC (Account No. 432, Allowance for Borrowed Funds Used During Construction), or capitalized interest, would be treated as a cash item, the same as other capitalized expenditures (material, labor, taxes, etc.), which is not deducted from net income.

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[1] The Securities Exchange Commission has statutory authority to establish financial accounting and reporting standards for publicly-held companies under the Securities and Exchange Act of 1934. Since 1973 the SEC has recognized the FASB as the designated organization in the private sector responsible for establishing financial accounting and reporting standards. The mission of the FASB is to establish and improve standards of financial accounting reporting for the guidance and education of the public, including issuers, auditors, and users of financial information. Those standards are, in effect, rules governing the preparation of financial reports. They are officially recognized as authoritative by the SEC (Accounting Series Release No. 150, dated December 20, 1973), and the American Institute of Certified Public Accountants (Code of Professional Conduct as adopted January 12, 1988).

[2] 53 FR. 21,853 (June 10, 1988); 43 FERC 61,405 (June 6, 1988).

[3] The proposed "Statement of Cash Flows" appears in Appendices 1, 2, and 3 not published in the **Federal Register**.

The Commission also noted that companies would use the present schedule for "Notes to Financial Statements" in the FERC annual report forms for other required separate disclosures, such as for noncash investing and financing activities and other events specified by SFAS No. 95. Finally, the Commission noted that the proposed change in statements in the annual report forms would not require any change in the Commission's regulations in Parts 141, 260 and 357.

Fourteen companies filed comments in this rulemaking docket.[4] These commenters generally support the proposed changes. Several commenters proposed certain modifications to the report forms. These modifications generally address minor problems requiring clarification of certain proposed line items. The Commission is essentially adopting the NOPR as proposed, incorporating some of the commenters' modifications.

III. Discussion

A. Reporting Burden

The public reporting burden for this collection of information is estimated to average 1,215 hours per response for FERC Form No. 1; 30 hours per response for FERC Form No. 1–F; 2,475 hours per response for FERC Form No. 2; 30 hours per response for FERC Form No. 2–A; and 150 hours per response for FERC Form No. 6. These hours include time for reviewing instructions, searching existing data resources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The Commission points out that these hours reflect the total amount of time required to complete these annual report forms. The Commission believes that the replacement of one schedule with another similar one will not change or increase the reporting burden for these annual report forms. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing these burdens, to the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis (202) 357–8173); and to the Office of Management and Budget, Washington, DC 20503 (*Attention:* Desk Officer for the Federal Energy Regulatory Commission).

[4] See Appendix A for a list of the commenters.

B. Comment Analysis

1. Required Use of Indirect Method for Operating Activities

Seven of the eleven commenters [5] discussing this issue agree with the Commission's decision to require the use of the indirect method for the operating activities part of the Cash Flow Statement. They state that it is consistent with the current method; allows users to assess differences between accrual basis income and cash flows; is required even for those using the direct method; and is administratively easier for most companies. The remaining commenters believe the Commission should permit the use of either method as does SFAS No. 95.[6] Further, they contend that the direct method is preferred by FASB and is more meaningful as a measure of cash flows from operating activities.

After considering the merits of the opposing viewpoints, the Commission has decided to retain the requirement to use the indirect method. Uniform reporting is a factor in the Commission's decision, but other factors include compatibility with the present Statement and the likelihood that the indirect method would be used by most companies because it is administratively easier. Moreover, a reconciliation of net income to net cash provided by operating activities is required if the direct method is used.

2. Net Changes in Receivables, Inventory and Payables (Line 10)

Of the four commenters addressing this item, American Electric Power (AEP) and Transcontinental Gas Pipe Line Corporation (Transco) state, correctly, that paragraph 121 of SFAS No. 95 requires "enterprises that use the indirect method to report separately changes in inventory, receivables and payables". In addition, Ohio Edison Co. and the New York State Department of Public Service urge the Commission to separate changes in receivables, payables and inventory that are related to operations from those that are related to construction (investing activities). These two commenters contend that this separation is required by SFAS No. 95. AEP also suggests that payables be combined with line 11 to read "Increase (Decrease) in Payables and Accrued Expenses," in accordance with the example in paragraph 132 of SFAS No. 95.

The Commission agrees with the above comments that SFAS No. 95 requires separate reporting for net changes in receivables, inventory and payables by operating and investing (construction) activities and has revised the Cash Flow Statement accordingly. We also agree with AEP's suggestion that payables be combined with accrued expenses as shown in paragraph 132 of SFAS No. 95. This was an inadvertent omission in the proposed rule.

3. Treatment of Borrowed Funds Portion of AFUDC as a Cash Item

Two commenters agreed [7] and two disagreed [8] with the treatment of the borrowed funds portion of AFUDC as a cash item. The Commission adheres to its proposal that the borrowed funds portion of AFUDC is a cash item and a cost that has been incurred to construct plant. It is a cash outflow the same as other capitalized expenditures such as labor, property taxes, etc.

4. Capital Leases

Certain commenters argue for the elimination of the items concerning capital leases at lines 34, 63 and 68. They state that SFAS No. 95 requires noncash transactions to be disclosed separately. AEP contends that lease payments should be included as cash items in operating activities (so no adjustment is necessary) and cites the Uniform System of Accounts Instruction 20, paragraphs C and D to support its position.

Under the Uniform System of Accounts, capitalization accounting for a lease arrangement is a noncash item. Lease payments made are accounted for through the operating activities of the company and do not require separate disclosure on this Statement. The Commission is deleting proposed items at lines 34, 63 and 68 which address leasing arrangements. The necessary information for leases will be shown on page 122, Notes to Financial Statements, as a noncash reconciliation item.

5. Other Operating Activities Items

Other suggestions pertaining to operating activities include: (1) Changing instruction No. 3 to specifically exclude gains and lossses from financing and investing activities; (2) adding "undistributed subsidiary earnings" as a line item to be deducted

[5] *See* Northeast Utilities, American Electric Power, Detroit Edison, New York State Department of Public Service, Ohio Edison, Price Waterhouse and Public Service Company of Indiana.

[6] *See* New York State Electric & Gas Corporation, Columbia Gas Transmission Corporation, Public Service Electric and Gas Company and Transcontinental Gas Pipe Line Corporation.

[7] Detroit Edison and Transcontinental Gas Pipe Line Corporation.

[8] New York State Department of Public Service and Public Service Electric and Gas Company.

from net income; and (3) ensuring that interest paid (net of amounts capitalized) and income taxes paid are separately reported in accordance with SFAS No. 95.

The Commission agrees with the above suggestions and the Statement has been revised to address these concerns.

6. Investing Activities

Three commenters express concern about noncurrent assets.[9] One concern relates to the elimination from the purchase and sale of noncurrent assets of code (e) (Statement of Changes in Financial Position), which requires the respondent to separately identify investments, fixed assests, and intangibles, etc. This code was inadvertently omitted in the proposed Statement. The Commission has decided to retain this code and has redesignated the line item as code (d).

AEP suggests that the item on line 41 should be changed to read "Disposition" rather than "Sale" since it is conceivable that this line could be used to report a return of capital or a repayment of an advance, and not just a sale of the associated company. Pennsylvania Power & Light Company asks whether the Commission intends that an initial investment to acquire a subsidiary company be shown on line 31 with subsequent investments to be shown on line 40.

We have changed the item on line 41 to 50 read "Disposition of Investments in and Advances to Associated and Subsidiary Companies," to reflect not only a sale of an investment in an associated company but also returns of capital and repayments of advances. In answer to the question of Pennsylvania Power & Light Company, initial and subsequent investments in a subsidiary company should be reported on line 40, whereas lines 26 through 34 should be used to record plant construction and plant purchase costs.

Finally, the Bureau of Economic Analysis at the United States Department of Commerce requests and expansion of "Gross Additions to Utility Plant" (line 26) to a three part allocation, *i.e.*, purchases of land, purchases of equipment and purchases of structures. The Bureau notes that the information provided to the Commission is used not only by the Commission, but also by the Bureau to prepare the official estimates of the gross national product.

The Commission prefers not to include this proposed change in the order. The data is not needed for this Commission's regulatory processes, and we are not in a position to determine the potential value of the information in relation to the additional burden entailed in reporting it in this manner.

7. Financing Activities

Northeast Utilities and Pennsylvania Power & Light Company express concern that the Commission would require reporting financing transactions on a net proceeds (payments) basis. Northeast Utilities proposes showing financings and redemptions on a gross basis by type of issue and "segregating (as one line item) financing expenses and gains/losses resulting from redemption."[10]

Pennsylvania Power & Light Company contends that reporting short-term debt such as commerical paper on a gross basis would not be meaningful, and notes that FERC Form No. 1 requires reporting short-term debt on a net proceeds basis. Pennsylvania Power & Light Company also requests that the item on line 65, "Contributions and Advances from Associated and Subsidiary Companies," be reclassified as an investing activity.

The Commission agrees that, for purposes of comparison with the balance sheet, it would be more meaningful to show long-term financings and redemptions on a gross basis, with a separate line item under "Other" for financing expenses and gains or losses resulting from redemptions, and we have revised the Statement accordingly. The Commission also agrees that it would be more meaningful to report short-term debt as a "net increase (decrease)" for the year and this change has been made in the revised Statement.

Upon reflection, the Commission believes that transactions between associated companies are so intertwined that more meaningful reporting and disclosure would be accomplished by reclassifying "Contributions and Advances from Associated and Subsidiary Companies" as an investing activity. Accordingly, the item on line 65 has been repositioned to line 39.

8. Cash and Cash Equivalents

Ohio Edison asks how the Commission intends "to tie the beginning and ending cash and cash equivalent balances to the balance sheet included in Form No. 1" as is required by paragraph 7 of SFAS No. 95.[11] Also, Ohio Edison asks, since paragraph 8 of SFAS 95 "defines cash equivalents as, generally, only investments with original maturities of three months or less", does the Commission plan to require a division of Account 136, Temporary Investments, into one account for investments of three months or less and one for other investments. If this is not done, then Ohio Edison suggests that the Commission should be more specific about what it means by cash and cash equivalents and whether there needs to be a direct relationship between the proposed statement and the Form No. 1 balance sheet.

The Commission adopts the definition of cash equivalents at paragraph 8 of SFAS No. 95. The Commission does not intend to divide Account No. 136 into short and long term portions, but instead believes that the same purpose will be accomplished by requiring a reconciliation between cash and cash equivalents on the Cash Flow Statement and the related accounts on the balance sheet. Therefore, Instruction No. 1 has been expanded to require such a reconciliation on page 122, Notes to Financial Statements.

9. Miscellaneous

Columbia Gas Transmission Corporation and Pennsylvania Power & Light Company recommend that the Commission revise lines 22, 52 and 84 of the Statement to make it more explicit that the total for each section may have a positive or negative cash flow. The Commission agrees and has revised the Statement accordingly.

IV. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) [12] and the Office of Management and Budget's (OMB) regulations [13] require that OMB approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this order are contained in FERC Form No. 1, "Annual Report or Major electric utilities, licensees and others"; FERC Form No. 1–F, "Annual report for Nonmajor public utilities and licensees"; FERC Form No. 2, "Annual report for natural gas companies"; FERC Form No. 2–A, "Annual report for Nonmajor natural gas companies" and FERC Form No. 6, "Annual report ot oil pipeline companies."

The Commission uses the data collected in these annual reports to carry out its regulatory responsibilities pursuant to the Federal Power Act, the

[9] *See* American Public Power Association, AEP and Pennsylvania Power & Light Co.

[10] Northeast Utilities comments at p. 2.

[11] Ohio Edison's comments at p. 2.

[12] 44 U.S.C. 3501–3520 (1982).

[13] 5 CFR 1320.12 (1988).

Natural Gas Act and the Interstate Commerce Act. Electric utilities, natural gas companies and oil pipeline companies subject to the Commission's jurisdiction are required to file these forms annually. The hours listed previously in this preamble reflect the total amount of time required to complete these annual report forms. The Commission believes the replacement of one statement with another similar one will not change or increase the reporting burden for these annual report forms. Additionally, the Commission notes that the information requested is already available to the regulated companies. The Commission also believes the change will avoid a burden increase since the regulated "companies" will not be required to prepare one statement for general reporting purposes and another statement for the Commission's reporting requirements.

The change in statements provided in this order will not change either the number of filings or the time requirements currently in the OMB inventory for each determination. The Commission estimates that the total annual reporting burden for each of these annual reports will remain the same.

This order is being submitted to the OMB for its information collection review. Interested persons may obtain information on the requirements of the proposed statement by contacting the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 (Attention: Marian Obis, (202) 357–8713). Comments on the information collection requirements in the proposed statement can be sent to the Office of Information and Regulatory Affairs of OMB, Executive Office Building, Washington, DC 20503 (Attention: Desk Officer for the Federal Energy Regulatory Commission).

V. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act (RFA) [14] requires agencies to prepare certain statements, descriptions and analyses of proposed rules that will have a "significant economic impact on a substantial number of small entities". The Commission is not required to make such analyses if a rule would not have such an impact.

As the commission noted in the NOPR, most electric utilities, natural gas companies and oil pipeline companies that will be affected by this order do not fall within the RFA's definition of small entity. There were no comments on the Commission's certification in the NOPR. Therefore, the Commission certifies that this order will not have a significant economic impact on a substantial number of small entities.

VI. Environmental Statement

The Commission will not prepare an environmental assessment or an environmental impact statement in this rulemaking docket. This order involves information gathering, analysis and dissemination and therefore is categorically exempt from the requirement to prepare an environmental assessment.[15]

VII. Effective Date

This order is effective November 18, 1988.

List of Subjects

18 CFR Part 141

Electric power, Reporting and recordkeeping requirements.

18 CFR Part 260

Natural gas, Reporting and recordkeeping requirements.

18 CFR Part 357

Pipelines, Reporting and recordkeeping requirements.

In consideration of the foregoing, the Commission is amending the annual report forms referenced in Parts 141, 260 and 357 in Chapter I, Title 18, *Code of Federal Regulations.*

By the Commission.

Lois D. Cashell,

Secretary.

Appendix A—Companies Filing Comments in Docket No. RM88–18–000

(1) American Electric Power Service Corporation
(2) American Public Power Association
(3) Columbia Gas Transmission Corporation
(4) U.S. Department of Commerce, Bureau of Economic Analysis
(5) Detroit Edison
(6) New York State Department of Public Service
(7) New York State Electric and Gas Corporation
(8) Northeast Utilities
(9) Ohio Edison
(10) Pennsylvania Power and Light Company
(11) Price Waterhouse
(12) Public Service Electric and Gas Company
(13) Public Service Indiana
(14) Transcontinental Gas Pipe Line Corporation

[FR Doc. 88–24026 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[14] 5 U.S.C. 601–612 (1982).

[15] *See* 18 CFR 380.4(a)(5) (1988).

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 172

[Docket No. 86F–0281]

Food Additives Permitted for Direct Addition to Food for Human Consumption; Aspartame

AGENCY: Food and Drug Administration.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of aspartame as a sweetener in the fillings of cookies. This action responds to a petition filed by Holland American Wafer Co. and to a comment on the petition.

DATES: Effective October 19, 1988; written objections and requests for a hearing by November 18, 1988.

ADDRESS: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, Rm. 4–62, 5600 Fishers Lane, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Carl L. Giannetta, Center for Food Safety and Applied Nutrition (HFF–334), Food and Drug Administration, 200 C Street SW., Washington, DC 20204, 202–426–5487.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of July 22, 1986 (51 FR 26308), FDA announced that a food additive petition (FAP 6A3912) had been filed by Holland American Wafer Co., 3300 Roger B. Chaffee Dr. SE., Grand Rapids, MI 49508, proposing that § 172.804 *Aspartame* (21 CFR 172.804) be amended to provide for the safe use of aspartame as a sweetener in wafer cookies.

The agency has determined that the phrase "use of aspartame as a sweetener in wafer cookies" used in the filing notice is confusing. The petition requested the use of aspartame in the filling for any wafer-like cookie and not in the wafer itself. Therefore, to clarify the intent of the petition, the agency has reworded the requested use to "the safe use of aspartame as a sweetener in the filling of wafer cookies."

The agency received one comment on the notice. The comment requested that FDA consider the petition to be asking for a regulation for the use of aspartame in all fillings, between cookies and crackers, that do not undergo heat treatment. The comment did not provide data to support its request for the use as aspartame in all fillings used between cookies and crackers. The petition,

however, contains sufficient information to support the use of aspartame in all fillings that are used between cookies, as suggested in the comment. This finding has been incorporated in the order set forth below. However, additional data in the form of a petition are required before the use of aspartame in the fillings used between crackers can be allowed.

Based on its evaluation of the comment, the data in the petition, and other relevant material, FDA concludes that the proposed use is safe. Therefore, the agency is amending 21 CFR 172.804 by adding a new paragraph (c)(18) as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday. This action was considered under FDA's final rule implementing the National Environmental Policy Act (21 CFR Part 25).

Any person who will be adversely affected by this regulation may at any time on or before November 18, 1988 file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 172

Food additives, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, Part 172 is amended as follows:

PART 172—FOOD ADDITIVES PERMITTED FOR DIRECT ADDITION TO FOOD FOR HUMAN CONSUMPTION

1. The authority citation for 21 CFR Part 172 continues to read as follows:

Authority: Secs. 201(s), 409, 72 Stat. 1784–1788 as amended (21 U.S.C. 321(s), 348); 21 CFR 5.10 and 5.61.

2. Section 172.804 is amended by adding a new paragraph (c)(18) to read as follows:

§ 172.804 Aspartame.

* * * * *

(c) * * *

(18) The fillings of prebaked cookies.

* * * * *

Dated: October 12, 1988.

John M. Taylor,

Associate Commissioner for Regulatory Affairs.

[FR Doc. 88–24159 Filed 10–18–88; 8:45 am]

BILLING CODE 4160-01-M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8232]

Income Tax; Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions

AGENCY: Internal Revenue Service, Treasury.

ACTION: Corrections to final regulations.

SUMMARY: This document contains corrections to final regulations that were published in the **Federal Register** on October 3, 1988 (53 FR 38708) as Treasury Decision 8232. The rules relate to the credit for clinical testing expenses for certain drugs for rare diseases or conditions.

FOR FURTHER INFORMATION CONTACT: Stuart G. Wessler, (202) 566–3822 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final rules that are the subject of this correction notice provided the public with the guidance needed to comply with the law (as enacted by the Orphan Drug Act) and affect taxpayers seeking to obtain the credit.

Need for Corrections

As published, Treasury Decision 8232 contains several typographical errors that might cause confusion to taxpayers and practitioners.

Correction of Publication

Accordingly, the publication of Treasury Decision 8232, which was the subject of FR Doc. 88–22375, is corrected as follows:

PART 1—[AMENDED]

§ 1.28–0 [Amended]

Paragraph 1. In § 1.28–0(d)(5)(iv), on page 38711, column 1, lines 13 and 14, which read, "(D) Lease payments and payments for supplies." should be removed and the language "(D) Lease payments." added in its place.

Par. 2. In § 1.28–0(d)(5)(iv), on page 38711, column 1, the language "(E) Payments for supplies." should be added immediately after the line which was corrected to read, "(D) Lease payments."

§ 1.28–1 [Amended]

Par. 3. In § 1.28–1(d)(1)(ii), on page 38712, column 2, line 4, which reads, "this subdivision, the taxpayer's" should be removed and the language "this paragraph (d)(1)(ii), the taxpayer's" added in its place.

Note.—For a **Federal Register** correction to this document see the Corrections section of this issue.

Dale D. Goode,

Chief, Regulations Unit, Assistant Chief Counsel (Corporate).

[FR Doc. 88–24014 Filed 10–18–88; 8:45 am]

BILLING CODE 4830-01-M

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DoD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Under Secretary of the Navy has determined that USS GUNSTON HALL (LSD–44) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special function as a naval dock landing ship. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 3, 1988.

FOR FURTHER INFORMATION CONTACT: Captain P.C. Turner, JAGC, U.S. Navy Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (202) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR Part 706. This amendment provides notice that the Under Secretary of the Navy, under authority delegate by the Secretary of the Navy, has certified that USS GUNSTON HALL (LSD–44) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3 (a), pertaining to the placement of the after masthead light and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a Navy ship. The Under Secretary of the Navy has also certified that the above-mentioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR Parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this ship in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

Accordingly, 32 CFR Part 706 is amended as follows:

PART 706—[AMENDED]

1. The authority citation for 32 CFR Part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

Vessel	Number	Forward masthead light less than the required height above hull. Annex I, sec. 2(a)(i)	Aft masthead light less than 4.5 meters above forward masthead light. Annex I, sec. 2(a)(ii)	Masthead lights not over all other lights and obstructions. Annex I, sec. 2(f)	Vertical separation of masthead lights used when towing less than required by Annex I, sec. 2(a)(i)	Aft Masthead lights not visible over forward light 1,000 meters ahead of ship in all normal degrees of trim. Annex I, sec. 2(b)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. (3)(a)	Percentage horizontal separation attained.
USS GUNSTON HALL	LSD–44							X	64

Approved:

H. Lawrence Garrett III,

Under Secretary of the Navy.

Date: October 3, 1988.

[FR Doc. 88–24158 Filed 10–18–88; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 100

[CCGD7 29–88]

Special Local Regulation; 1988 Key West Offshore World Cup Race

AGENCY: Coast Guard, DOT.

ACTION: Final Rule.

SUMMARY: Special local regulations are being adopted for the CROPBRA 1988 Key West Offshore World Cup Race. This event will be held on November 08, 10, and 12th between 0900 and 1400 local time. The regulations are needed to promote safety of life on navigable waters.

EFFECTIVE TIMES: These regulations become effective at 9:00 a.m. local time on November 8, 10, and 12, 1988 and terminate at 2:00 p.m. local time, each day.

FOR FURTHER INFORMATION CONTACT: QMC Kemnitz, (305) 292–8727.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are QMC C. R. Kennitz, project officer, USCG Group Key West, and LCDR S. T. Fuger, Jr., project attorney, Seventh Coast Guard District Legal Office.

Discussion of Regulations

The 1988 Key West/NPBA World Series Kilo Race will be held from the Milling Area West of Wisteria Island in Key West Harbor to Check Point 1 (24–28–44N 81–51–55W) to Check Point 2 (24–49–22N 81–44–12W) to Check Point 3 (24–32–48N 81–44 15W) to Check Point 4 (24–32–16N 81–48–25W) through Key West Harbor, and back to the Milling Area West of Wisteria Is.

Approximately 85 power boats are expected to participate. Regulations are issued by Commander, Seventh Coast Guard District in order to promote the safety of life on the navigable waters.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Regulations

In consideration of the foregoing, Part 100 of Title 33, Code of Federal Regulations, is amended as follows:

1. The authority citation for Part 100 continues to read as follows:

Authority: 33 U.S.C. 1233, 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35–T07–29 is added to read as follows:

§ 100–35–T07–29 Key West Offshore World Cup Race.

(a) *Regulated area.* All navigable waters in an area bounded by:

(1) 24–32–42N SW of Ft Taylor, Key West 81–48–46W
(2) 24–32–54N Key West Main Channel Buoy 15 81–48–57W
(3) 24–33–30N Key West Main Channel Buoy 17 81–48–55W
(4) 24–33–33N Key West Main Channel Buoy 19 81–48–44W
(5) 24–33–00N Key West Harbor Turning Basin Lt 27 81–48.29W
(6) 24–34–06N NW Point Wisteria Island 81–48–33W
(7) 24–34–30N Fleming Key Front Range Lt 81–47–48W
(8) 24–34–18N SW Point Fleming Key 81–48–02W
(9) 24–34–03N NW Corner Pier D3 81–48–27W
(10) 24–33–41N Pier House Restaurant 81–48–27W
(11) 24–32–42N Origin 81–48–46W

(b) *Special Local Regulations.* (1) Entry into the regulated area is prohibited unless authorized by the patrol commander.

(2) Spectator boats may observe the race in the designated spectator area West of the following positions:

(i) 24–33–30N Key West Main Channel Buoy 17 81–48–55W
(ii) 24–33–33N Key West Main Channel Buoy 19 81–48–29W
(iii) 24–34–00N Key West Harbor Turning Basin Lt 27 81–48–29W
(iv) 24–34–06N NWPt Wisteria Is 81–48–33W

(3) A succession of not less than 5 short whistle or horn blasts from a patrol vessel will be the signal for any non-participating vessel to stop immediately. The display of a red distress flare from a patrol vessel will be signal for any and all vessels to stop immediately.

Dated: October 3, 1988.

Martin H. Daniell,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 88–23926 Filed 10–18–88; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[FRL–3457–4; TN–032]

Approval and Promulgation of Implementation Plans; Tennessee Stack Height Rules

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: In this action, EPA is approving Tennessee's stack height regulations, submitted as revisions to Chapter 1200–3–24 of the State's regulations. Approval was proposed on May 26, 1987 (52 FR 19540). These regulations are equivalent to EPA requirements promulgated at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations. Although EPA generally approves Tennessee's stack height rules on the grounds that they satify 40 CFR Part 51, this action may be subject to modification when EPA completes rulemaking in response to the decision in *NRDC* vs *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of Tennessee that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Tennessee and source owners or operators.

DATE: This action is effective November 18, 1988.

ADDRESSES: Copies of the materials submitted by the State may be examined during normal business hours at the following locations:

Air Program Branch, Environmental Protection Agency, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365.
Public Information Reference Unit, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.
Tennessee Department of Health and Environment, 701 Broadway, Nashville, Tennessee 37219–5403.

FOR FURTHER INFORMATION CONTACT: Beverly T. Hudson, EPA Region IV, Air Program Branch at the above listed address, telephone (404) 347–2864 or FTS 257–2864.

SUPPLEMENTARY INFORMATION: In the Federal Register of July 8, 1985 (50 FR 27892), EPA published final regulations to implement section 123 of the Clean Air Act (CAA), which regulates the manner in which dispersion of pollutants from a source may be considered in setting emission limitations. Pursuant to these regulations and the Clean Air Act Amendments of 1977, all states were required to: (1) Review and revise, as necessary, their state implementation plans (SIPs) to include provisions that limit stack height credit and dispersion techniques in accordance with the revised regulations, and (2) review all existing emission limitations to determine whether these limitations have been affected by stack height credits above Good Engineering Practice (GEP) or any other dispersion techniques. For any limitations so affected, states were to prepare revised limitations consistent with their revised SIPs. All SIP revisions and revised emission limits were to be submitted to EPA within nine months of promulgation.

Subsequently, EPA issued detailed guidance on carrying out the necessary review. For the review of emission limitations, states were to prepare inventories to stacks greater than 65 meters in height and sources with emission of sulfur dioxide (SO_2) in excess of 5000 tons per year. These limits correspond to the de minimis GEP stack height and the de minimis SO_2 emission exemption from prohibited dispersion techniques. These sources were then to be subjected to detailed review for conformance with the revised regulations. State submissions were to contain an evaluation of each stack and source in the inventory.

EPA's stack height regulations were challenged in *NRDC* vs. *Thomas*, F2d 1224 (D.C. Cir. 1988). On January 22, 1988, the U.S. Appeals Court for the D.C. Circuit issued a decision affirming the regulations in large part, but remanding three provisions to EPA for reconsideration:

1. Grandfathering pre-October 11, 1983, within-formula stack height increases from demonstration requirements (40 CFR 51.100(kk)(2)).

2. Dispersion credit for sources originally designed and constructed with merged or multi-flute stacks (40 CFR 51.100(hh)(2)(ii)(A)).

3. Grandfathering pre-1979 use of the refined H+1.5L formula (40 (FR 51.100(ii)(2))).

If EPA's response to the NRDC remand modified the July 8, 1985, stack height regulations, EPA will notify the State of Tennessee that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Tennessee and source owners or operators.

State Submission

On August 18, 1986, the Tennessee Department of Public Health and Environment submitted to EPA a regulation (part of Chapter 1200–3–24 of the State's regulations) on stack heights, which satisfied EPA's stack height requirements. On May 26, 1987 (52 FR 19540.), EPA proposed to approve the regulation. (The proposal was made on the assumption that the regulation would not change significantly before it became State-effective. It became State-effective without significant changes on November 22, 1987). The regulation applies to all stacks not in existence on December 31, 1970, and all dispersion techniques implemented since December 31, 1970. The regulation applies to both new and existing sources, thereby satisfying requirements for state new source review regulations at 40 CFR 51.164. There were no comments on EPA's proposal to approve the Tennessee stack height regulations. Tennessee's revisions bring their existing regulations into conformance with the federal stack height rules.

Final Action

EPA is approving Tennessee's stack height regulations. These revisions are consistent with EPA's stack height requirements at Part 51 of Chapter I, Title 40 of the Code of Federal Regulations. However, EPA points out again that this action may be subject to modification when EPA completes rulemaking to respond to the decision in *NRDC* vs. *Thomas*, 838 F.2d 1224 (D.C. Cir. 1988). If EPA's response to the NRDC remand modifies the July 8, 1985, stack height regulations, EPA will notify the State of Tennessee that its rules must be changed to comport with EPA's modified requirements. This may result in revised emission limitations or may affect other actions taken by Tennessee and source owners or operators.

Under section 307(b)(1) of the Act, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by December 19, 1988. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Under 5 U.S.C. 605(b), I certify that this SIP revision will not have a significant economic impact on a substantial number of small entities. (See 46 FR 8709.)

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

List of Subjects in 40 CFR Part 52

Air pollution control, Intergovernmental relations, Incorporation by reference.

Note.—Incorporation by reference of the Tennessee State Implementation Plan was approved by the Director of the Federal Register on July 1, 1982.

Dated: September 26, 1988.

Lee M. Thomas,

Administrator.

Part 52 of Chapter I, Title 40, Code of Federal Regulations, is amended as follows:

PART 52—[AMENDED]

1. The authority citation for Part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7642.

Subpart RR—Tennessee

2. Section 52.2220 is amended by adding paragraph (c)(93) to read as follows:

§ 52.2220 Identification of plan.

* * * * *

(c) * * *

(93) Stack height regulations were submitted to EPA on August 18, 1986, by the Tennessee Department of Health and Environment.

(i) Incorporation by reference.

(A) Tennessee Air Pollution Control Regulations, Good Engineering Practice Stack Height Regulations, which became effective on November 22, 1987.

(ii) Other material—none.

[FR Doc. 88–22626 Filed 10–18–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 700

[OPTS–2600002A; FRL–3465–1]

Fees for Processing Premanufacture Notices, Exemption Applications and Notices, and Significant New Use Notices; Correction

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; correction.

SUMMARY: In FR Doc. 88–18452 in the **Federal Register** of August 17, 1988, the following correction is made: In § 700.45, on page 31253 in the middle column in paragraph (e)(2) in the fourth line, correct "P.O. 360227M" to read "P.O. 360277M."

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Mike Stahl, Acting Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460, (202) 554–1404, *TDD:* (202) 557–0551.

Dated: October 12, 1988.

Victor J. Kimm,

Acting Assistant Administrator, for Pesticides and Toxic Substances.

[FR Doc. 88–24123 Filed 10–18–88; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 761

[OPTS–62051A; FRL–3464–9]

Polychlorinated Biphenyl Spill Cleanup Policy; Amendments and Clarifications

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule; amendment and clarification of policy statement.

SUMMARY: This document makes two changes in the polychlorinated biphenyl (PCB) spill cleanup policy, published in the **Federal Register** of April 2, 1987 (52 FR 10688), and answers some questions that have arisen about the policy. The changes make the PCB spill quantity notification requirement conform to the quantity requirement for reporting PCB spills under the National Contingency Plan (NCP). The other change involves inserting an explanatory reference to the branch office to which telephone calls should be made. This document amends and clarifies EPA's spill cleanup policy and is exempt from notice and comment requirements under section 553(b)(A) of the Administrative Procedure Act.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Michael M. Stahl, Director, TSCA Assistance Office (TS–799), Office of Toxic Substances, Environmental Protection Agency, Room EB–44, 401 M Street SW., Washington, DC 20460, (202–554–1404), TDD: (202–554–0551).

SUPPLEMENTARY INFORMATION: In the PCB spill cleanup policy, published in the **Federal Register** of April 2, 1987 (52 FR 10688), EPA established the measures to be taken following a spill that the Agency considered would constitute adequate cleanup for the majority of PCB spills and by which the Agency would judge cleanup for enforcement purposes. This document changes one notification requirement in the policy, adds an office name parenthetically, and clarifies other issues.

I. Change in Notification Provisions

In both the discussion in the preamble to the April 2, 1987 policy, under Units IV.A.1. and IV.A.1.c. and also in § 761.125 (a)(1) and (a)(1)(iii), the policy

states that spills of 10 pounds or more of PCB material must be reported to the National Response Center under the NCP. The NCP requires spills of 10 pounds or more by weight of PCBs, not PCB-containing material, to be reported. In order to be consistent with this reporting requirement, EPA is changing § 761.125 (a)(1) and (a)(1)(iii) to require spills of 10 pounds or more by weight of PCBs, not PCB-containing material, to be reported to the appropriate EPA regional office. This change in reporting requirements is not intended to relieve persons from other requirements involving cleanup.

II. Clarifications

EPA has received questions on certain features of the policy and is taking this opportunity to clarify them.

1. A questioner asked why § 761.125(b)(3)(iii) requires a certification statement by the responsible party for cleanup of spills of small quantities of low concentration PCBs, involving less than 1 pound of PCBs by weight, while § 761.125(c)(5) does not require a certification statement that cleanup requirements for spills of large quantities and high concentrations of PCBs have been met. The reason for not requiring a certification statement for the cleanup of large quantities of low concentration spills and all quantities of high concentration spills is that these spills require post cleanup sampling. The post cleanup sampling data give the equivalent of a certification statement. The spills of small quantities of low concentrations do not require post cleanup sampling.

2. A questioner asked why in both the preamble under Unit IV.A. and in § 761.125(a)(1) (i) and (ii) when notification to the regional office is required, the specific office to report to, Pesticides and Toxic Substances Branch, is named parenthetically, while in § 761.125(a)(1)(iii) the specific office within EPA is not named. The omission is an oversight and § 761.125(a)(1)(iii) is being amended to correct it.

3. Concern was expressed regarding the effect on cleanup levels by the measurement of the distance between a spill in a restricted access area and a nonrestricted access area. The distance of 0.1 kilometer, which is the cut-off distance, is measured from the spill to the actual area where people live or work. That is, a restricted access area would have to be cleaned to the level for a residential/commercial area if the spill occurred within 0.1 kilometer of where people live or work.

4. Several persons asked whether cement is porous or nonporous. Under definitions in Unit III.13. of the preamble and in § 761.123 under "Nonimpervious solid surfaces," cement is given as an example of a porous surface. A question to EPA referred to § 761.65(b)(1)(iv) where Portland cement is given as an example of an impervious material. In short, Portland cement is porous for purposes of spill cleanup standards in that PCBs can penetrate its surface, but impervious to penetration beyond the cement for purposes of PCB storage requirements. In the storage regulations, § 761.65(b)(1)(iv), Portland cement concrete is considered an adequately impervious flooring for PCBs stored for disposal. That is, it acts as a barrier keeping PCBs from migrating through the cement into the environment below, usually soil. The surface of the Portland cement concrete, however, although it has a very fine, tight texture, is rough and porous to the extent that it cannot be readily cleaned. Human exposure from a spill on Portland cement would occur through respiratory or dermal contact. Hence, the policy requires that the surfaces be cleaned to the nonimpervious standard of the policy.

5. Persons responsible for the cleanup of spills were concerned about meeting the 24-hour timeframe for notification or consultation with the appropriate regional office since there was no way to contact some of the regions at night and during holidays and weekends. In most regions, the Emergency Response Office will take such calls. If the regional office cannot be reached at night and during holidays and weekends, the responsible party should keep a record of the attempts to notify the region by telephone and should telephone the region on the next working day and report the spill and the unsuccessful attempts to make telephone contact. In the meantime, however, all possible immediate steps to contain and decontaminate the area should be initiated at once.

6. Under § 761.125(c)(4)(v), contaminated soil in nonrestricted access areas must be decontaminated down to 10 parts per million (ppm) by weight of PCBs, provided that the soil is excavated to a minimum of 10 inches and the hole then filled in with a cap of 10 inches of clean soil, that is, soil that contains less than 1 ppm PCBs. Excavating a minimum of 10 inches is required to ensure that where a level of 10 ppm PCBs remains, it will be covered by 10 inches of clean soil. However, if less than 1 ppm PCBs is found in the soil before the 10-inch minimum is reached, no further excavation is required.

III. Corrections

Two corrections are made in the preamble of the policy. Two lines from the bottom of the middle column on page 10692, the parenthetical information is corrected to read "(10 μg/100 cm^2)." At the end of the first paragraph on page 10696, the citation for the health effects of PCBs is corrected to read "July 10, 1984 **Federal Register** (49 FR 28172)."

IV. Other Statutory Requirements

A. Administrative Procedure Act

The spill cleanup policy was published without notice and comment because policy statements are exempt from notice and comment requirements under the Administrative Procedure Act. For the same reason the revisions of §§ 761.125 (a)(1) and (a)(1)(iii) of the spill cleanup policy are being published without notice and comment and are effective upon publication.

B. Executive Order 12291

Under Executive Order 12291, issued February 17, 1981, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a regulatory impact analysis be prepared. EPA has determined that this policy is not a "major rule" as that term is defined in section 1(b) of the Executive Order and therefore is not subject to the requirement that a regulatory impact analysis be prepared.

This policy amendment was submitted to the Office of Management and Budget as required by Executive Order 12291.

C. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Administrator may certify that a rule will not, if promulgated, have a significant impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis. EPA certifies that this policy amendment will not have a significant economic impact on a substantial number of small entities.

D. Paperwork Reduction Act

The Paperwork Reduction Act of 1980 (PRA), 44 U.S.C. 3501 *et seq.*, authorizes the Director of OMB to review certain information collection requests by Federal agencies. This amendment does not contain any information collection

or recordkeeping requirements as defined in the PRA.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: October 7, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Therefore, 40 CFR Part 761 is amended as follows:

PART 761—[AMENDED]

1. The authority citation for Part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, and 2611; Subpart G is also issued under 15 U.S.C. 2614 and 2616.

2. In § 761.125, the introductory text of paragraph (a)(1) and paragraph (a)(1)(iii) are revised to read as follows:

§ 761.125 Requirements for PCB spill cleanup.

(a) * * *

(1) *Reporting requirements.* The reporting in paragraphs (a)(1) (i) through (iv) of this section is required in addition to applicable reporting requirements under the Clean Water Act (CWA) or the Comprehensive Environmental Response Compensation and Liability Act of 1980 (CERCLA). For example, under the National Contingency Plan all spills involving 10 pounds or more by weight of PCBs must currently be reported to the National Response Center (1–800–424–8802). The requirements in paragraphs (a)(1) (i) through (iv) of this section are designed to be consistent with existing reporting requirements to the extent possible so as to minimize reporting burdens on governments as well as the regulated community.

* * * * *

(iii) Where a spill exceeds 10 pounds of PCBs by weight and is not addressed in paragraph (a)(1) (i) or (ii) of this section, the responsible party will notify the appropriate EPA regional office (Pesticides and Toxic Substances Branch) and proceed to decontaminate the spill area in accordance with this TSCA policy in the shortest possible time after discovery, but in no case later than 24 hours after discovery.

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[FR Doc. 88–24124 Filed 10–18–88; 8:45 am]

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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 0 and 1

[General Docket 86–285; FCC 88–301]

Fee Collection Program

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission's rules relating to the procedures for implementation of a fee collection program under 47 U.S.C. 158 (1986), are amended in response to petitions for reconsideration, comments, requests for clarifications, and waivers.

EFFECTIVE DATE: October 11, 1988.

ADDRESS: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Office of General Counsel, Federal Communications Commission, (202) 632–6990.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Memorandum Opinion and Order in Gen. Docket No. 86–285, adopted September 22. 1988, and released October 11, 1988. The new procedures make certain adjustments in the Commission's *Fee Collection Program,* (summarized at 52 FR 5285, February 20, 1987); 2 FCC Rcd. 947.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW, Suite 140, Washington, DC 20037.

Summary of Memorandum Opinion and Order

1. In response to petitions for reconsideration of the Commission's *Fee Collection Program, supra,* as well as responsive pleading, comments, petitions for declaratory rulings, requests for fee waivers and/or refunds, general correspondence, and the Commission's experience in administering the fee program, certain clarifications and changes in that program are warranted. The issues considered include: fees for applications that are untimely, resubmitted after dismissal by staff action, or necessitated by rule changes; fee exemptions for noncommercial educational applicants; petitions requesting "significantly viewed" status under section 76.54 (47 CFR 76.54); the applicability of the mass media hearing charge in cases where only one applicant is prosecuting its application; and extensions of time within which to consummate a sale in the common carrier services; and various matters concerning the method of fee payment.

2. The *Fee Program* concluded that fees would be retained irrespective of the disposition of the application. The fees submitted with untimely window applications filed directly with the Commission are therefore retained, but, under the procedures established by the Mellon Bank, untimely window applications are returned with the fee payments. To avoid such unequal treatment, we will refund fees in cases where the window filing is untimely. If an application dismissed by the staff is refiled, it must be accompanied by a fee payment. Such applications may require as much, and possibly more, work than the original application. However, applications required by rule changes are exempt from fee requirements.

3. Full service noncommercial educational radio and television stations are exempt from the fee requirements, but translator and LPTV applicants are exempt from fees only if the applicant is also the licensee of a noncommercial educational full power station. The congressional exemption for noncommercial educational applicants was intended to enhance the financial support for these services. In this regard, the weight of the policy bears equally on translator or LPTV applicants that propose to operate as noncommercial educational stations. Recognizing that LPTV stations can change from noncommercial to commercial operation without notifying the Commission, LPTV applicants not otherwise exempt must pay the applicable fees, but they will be entitled to a refund after grant upon a showing that the applicant has obtained NTIA funding or satisfies the Commission's rule requirements for noncommercial educational eligibility and operation.

4. Similarly, although there are no fees for ITFS applications, licensees may file applications for microwave facilities that are subject to fees. ITFS is an "instructional" service, as opposed to a "noncommercial educational" service. Nevertheless, there is much to be gained and little to be lost in providing fee waivers for ITFS licensees when they apply for interconnection facilities to be used in providing their noncommercial educational or instructional service.

5. Requests for significantly viewed status under § 76.54 of the Commission's rules are not subject to a fee. The fee legislation provides for a $700 fee for "Cable Special Relief Petitions." 47 U.S.C. 158. The legislative history defines "Cable Special Relief Petitions" as petitions "seeking waiver of any provision of the rules relating to cable television systems, or the imposition of additional or different requirements, or the issuance of a ruling on a complaint or disputed question." Conference Report at 428; see also *Fee Program*, 2 FCC Rcd at 970–71. A petition requesting significantly viewed status does not request a waiver of the Commission's rules nor the imposition of additional or different requirements. In such circumstances, "significantly viewed" petitions which offer the showings as required in § 76.54 are not "special relief" petitions within the definition in the Conference Report.

6. The fee legislation imposes a $6,000 hearing charge, "levied when an application is designated for hearing." Conference Report at 427. However, the Commission determined that the fee should not apply to "enforcement actions," because a party should not be charged a fee to defend itself. The fee must be paid with the filing of the Notice of Appearance. *Fee Program*, 2 FCC Pcd at 966; see also 47 CFR 1.221(f). Since the adoption of the *Fee Program*, there have been cases designated as comparative proceedings that become noncomparative in nature. The cases include situations in which only one of the designated applicants files a Notice of Appearance, as well as settlement cases in which the surviving applicant must resolve a basic qualifying issue before it can be granted. In either situation, the case is neither a comparative proceeding nor an enforcement action.

7. Where the surviving applicant is immediately grantable, imposition of the fee has the appearance of fundamental unfairness. Accordingly, no hearing fee will be required in such cases. If the surviving applicant paid the fee with its Notice of Appearance, it will be entitled to a refund. However, if the surviving applicant is not immediately grantable, the feel will be paid. That payment will be refunded if the applicant can be granted without a decision on the merits, but it will be retained in cases where the Commission's evidentiary processes must be utilized to resolve any outstanding matters. In this regard, a decision by a presiding judge that deletes all outstanding issues is not a decision on the merits. On the other hand, where the applicant can only be granted after consideration of post-designation amendments and/or evidentiary submissions, the presiding judge's decision would be on the merits, and the hearing fee would be retained.

8. It does not appear that the fee legislation contemplated a fee for extension of time within which to consummate a previously approved sale. Thus, no fee will be due for these requests.

9. The requirement that filings subject to fees be accompanied by the full and proper payment of fees appears to have resulted in some confusion. Thus, § 1.1107(b) is amended to make it clear that filings submitted without a fee, with an insufficient fee, with a fee payment in an improper form, or with a payment instrument that is uncollectible will be dismissed. Moreover, § 1.1116 is amended to specify that applicants seeking reconsideration and/or review of a fee determination must pay the applicable fee in order for their request to be considered on the merits.

10. Applicants may correct a faulty fee payment before staff action by resubmitting the application together with the entire fee. The Commission would then refund the prior payment. However, when an applicant corrects an insufficient or failed fee, the filing date of the corrected, sufficient fee shall be considered the filing date of the resubmitted application. Thus, the corrected fee and resubmitted application must be received on or before the established deadline in order to be considered timely filed.

11. Section 1.1108(b) requires that fee payments be made with "one check, bank draft or money order with each application." The rule is intended to ease the administrative burden of tracking payment instruments. *Fee Program*, 2 FCC Rcd at 955. However, there are limits on the amount for which single money orders can be written, and those maximums may be lower than the amount of the required fee. Recognizing the importance of money orders as a means of payment for persons without checking accounts or regular access to a bank, the Memorandum Opinion and Order permits fee payments with multiple money orders. On the other hand, there is no public interest benefit to a proposal to permit fee payment by two checks in assignment and transfer cases.

12. Section 1.1108(a) provides that fee payments should be "denominated in U.S. dollars and deposited in United States financial institutions." 47 CFR 1.1108(a). We are aware that some applicants may be based abroad, and the quoted language may impose certain difficulties in the payment of the required fees. However, the rule provision is not inconsistent with the Convention on the Organization for Economic Co-operation and Development (OECD), December 14, 1960, 12 U.S.T. 1728, T.I.A.S. No. 4891. Moreover, we do accept fee payments with foreign checks, bank drafts, or international money orders, denominated in U.S. dollars, that indicate a corresponding domestic bank for collection.

13. The *Fee Program* indicated that the Commission's depository bank would present "all instruments to the drawer's bank twice before returning the instrument to the Commission as an uncollectible item." 2 FCC Rcd at 957. By this, we mean that the Commission's bank will handle fee submissions in the normal manner in which checks are cleared by banks. Generally, checks returned for insufficient or uncollected funds are presented a second time. That is not the case for checks that are returned because the account has been closed or payment has been stopped. Although the *Fee Program* indicated that the ultimate responsibility for the payment of fees rests with the applicant (2 FCC Rcd at 957), the dismissal of an application because of a bank error may be an unduly harsh result, and an applicant could be left without a suitable remedy. Thus, where a payment is dishonored due solely to a bank error, upon an appropriate showing, the applicant would be entitled to reinstatement with a substitute payment.

14. The Commission previously determined that it would not provide receipts for fee submissions. *Fee Program*, 2 FCC Rcd at 950. However, the staff would continue to date stamp copies of applications when provided with a copy for that purpose. Section 1.1107 is amended to reflect the stamp-in procedure, but, it should be noted that, for practical reasons, a stamped copy of the application does not establish that the fee was actually paid.

15. In 1986, the Commission adopted a frequency coordination procedure for certain Private Land Mobile Radio Services *Frequency Coordination in the Private Land Mobile Radio Services*, 103 FCC 2d 1093 (1986). Therein, it was determined that coordinated applications would be filed by the frequency coordinator. 47 CFR 1.912. To accommodate this procedure, the *Fee Program* concluded that frequency coordinators should forward an applicant's fee payment to the Commission along with the application. An applicant may enclose its fee

payment with the application sent to the coordinator, to be held until the application was filed, or await the completion of coordination before sending the fee to the coordinator to be filed with the application. *Fee Program*, 2 FCC Rcd at 953.

16. The *Fee Program* made it abundantly clear that the frequency coordinator is not serving as a collection agent for the government. 2 FCC Rcd at 953. Rather, its role with regard to fee payments is that of a conduit that forwards the applicant's fee payment along with the application to the Commission. The statutory authority to utilize frequency coordinators presumed that the Commission would implement frequency coordination with procedures reasonably designed to facilitate the efficient handling of applications. The determination as to filing procedures in *Frequency Coordination* was based on efficient processing practices, and the requirement that frequency coordinators also forward the fee payment is intended to maintain those efficiencies. In this regard, §1.1102 is amended to specify the options available to applicants that must file through frequency coordinators. Moreover, frequency coordinators are expected to act in a responsible manner, and a refusal to inform an applicant of the results of coordination would be in derogation of this duty. Similarly, upon request by the applicant, frequency coordinators should provide an extra copy of the application as filed to the date stamped by the Commission for return to the applicant.

17. We have carefully considered the formal and informal requests to reconsider, modify and/or clarify various aspects of the *Fee Program*. On the basis of that review and our own experiences administering the program for the past year, we believe that the modifications and clarifications made herein will facilitate the collection of fees and make the program more equitable to the benefit of the public and the government.

18. In addition to the changes noted above, the rules containing the fee schedules (47 CFR 1.1102, 1.1103, 1.1104, and 1.1105) are being reformed for clarity and ease of application. While so doing, we have corrected a typographical error in the old § 1.1102 n.6. See 47 CFR 1.1102(b)(2).

19. The decision contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to contain no new or modified form, information collection, and/or record keeping, labeling, disclosure, or record retention requirements, and it will not increase or decrease burden hours imposed on the public.

20. According, *it is ordered*, that Parts 0 and 1 of the Commission's rules, 47 CFR Parts 0, 1, *are amended*, as set forth below.

21. As the rule changes set forth below are all procedural, they will be effective immediately upon release of this Memorandum Opinion and Order. 5 U.S.C. 553(d). Moreover, it is our intention to apply the rules, clarifications and policies enunciated herein to all pending cases involving the collection of fees unless it appears that the filer acted in reliance on prior contrary pronouncements to its detriment. On the other hand, we will not apply these rules, clarifications and policies to cases in which a final determination on the applicability of fees has been made.

22. Authority for this action is contained in sections 4(i) and 8(f) of the Communications Act of 1934, as amended.

23. For further information on this proceeding, contact Martin Blumenthal, Office of General Counsel, 202/254-6530.

List of Subjects

47 CFR Part 0

Organization and functions (Government agencies).

47 CFR Part 1

Administrative practice and procedure, Communications, Common carriers, Radio, Television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

1. The authority citation for Part 0 continues to read as follows:

PART 0—[AMENDED]

Authority: Sec. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155, unless otherwise noted.

§ 0.401 [Amended]

2. Section 0.401 is amended by adding new paragraph (b)(1)(iii) as follows:

* * * * *

(b) * * *

(1) * * *

(iii) Applications for a new television translator or a new low power television station or for major changes in the authorized facilities of such stations can be filed only during certain window periods specified in separate Commission Public Notices. The application delivery locations and addresses for such window filings are announced in those Public Notices.

* * * * *

PART 1—[AMENDED]

3. The authority citation for Part 1, Subpart G continues to read as follows:

Authority: Sec. 5002 (e) and (f), Pub. L. 99-272, 100 Stat., 82, 118-121, 47 U.S.C. 158.

4. Section 1.1102 is revised to read as follows:

§ 1.1102 Schedule of charges for private radio services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for private radio authorizations submitted to the Commission.

(a) Marine Coast Stations (includes classes of station listed in § 80.17, except "Ship Station"):

(1) New Authorization.....$60
(no fee for special temporary authority or duplicate licenses)
(2) Modification or Assignment.....$60
(no fee to inform the FCC of changes in licensee name or address, vessel name, or that station is no longer in service)
(3) Renewal.....$60
(concurrent modification and renewal on FCC Form 503 requires a fee of $60 per station)

(b) Operational Fixed Microwave Stations:

(1) New Authorization.....$135
(no fee for special temporary authority or duplicate license)
(2) Modification or Assignment.....$135
(no fee to inform the FCC of changes of licensee name or address, or that station is no longer in service)
(3) Renewal.....$135
(concurrent modification and renewal on FCC Form 402 requires a fee of $135 per station)

(c) Aviation Ground Stations (includes all radio stations licensed under Part 87 except Civil Air Patrol stations):

(1) New Authorization.....$60
(no fee for special temporary authority or duplicate licenses)
(2) Modification or Assignment.....$60
(no fee to inform the FCC of changes in licensee name or address, or that a station is no longer in service)
(3) Renewal.....$60
(concurrent modification and renewal on FCC Form 406 requires a fee of $60 per station)

(d) Land Mobile Radio Licenses (includes all radio services regulated under Part 90 as well as the general mobile radio services (Part 95); for applications filed by certified frequency coordinators under 47 CFR 1.912(b), applicants may either attach the fee payment instrument, payable to the Federal Communications Commission, to the application when it is submitted for coordination or request that the

coordinator report the results of coordination before the fee instrument is submitted to the coordinator for attachment to the application to be forwarded to the Commission):

(1) New Authorization.....$30
(each request consisting of not more than six specific fixed stations requires a fee of $30; an additional fee of $30 is required for each increment of six fixed stations; no fee for special temporary authority or duplicate licenses)
(2) Modification or Assignment.....$30
(fee required for each increment of six fixed stations; no fee to inform FCC of changes in licensee name or address, the number or locations of station control points, the number or location of control stations meeting the requirements of § 90.119(a)(2)(ii), the number of mobile units operated by radiolocation service licensees, or that the station is no longer in service)
(3) Renewal.....$30
(concurrent modification and renewal made on FCC Form 574 requires a fee of $30 per station license)

5. Section 1.1103 of the Commission's rules is revised to read as follows:

§ 1.1103 Schedule of charges for equipment approval services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for equipment approvals submitted to the Commission.

(a) Certification (fees are also required under the abbreviated procedures for private label equipment and non-permissive changes):

(1) Receiver (except TV & FM receivers).....$250
(2) All Other Devices (per device).....$650

(b) Type Acceptance:

(1) Approval of Subscription TV System.....$2,000
(modifications that require a new application for advance approval will require an additional fee of $2000)
(2) All Other.....$325
(fee also applies for non-permissive changes that require a new application for type acceptance)

(c) Type Approval (all devices):

(1) With Testing.....$1,300
(also applies to major modifications that require testing)
(2) Without Testing.....$150
(applies to previously tested and approved equipment resubmitted for approval under new identification or for minor modification without FCC testing)
(d) Notification.....$100

6. Section 1.1104 is revised to read as follows:

§ 1.1104 Schedule of charges for mass media services.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for mass media authorizations submitted to the Commission.

(a) Commercial TV Stations:

(1) New or Major Change Construction Permit.....$2,250
(2) Minor Change.....$500
(no fee for requests for special temporary authority, requests for extension of time and/or replacement of construction permits, requests for remote control operation, or modifications that may be made without prior FCC authorization)
(3) Hearing.....$6,000
(for each application designated for a comparative hearing; fee is due with notice of appearance (§ 1.221); see also § 1.1111(c))
(4) License.....$150
(no fee to request a modified station license to reflect changes that do not require prior FCC authorization)

(5) Assignment or Transfer (per station, regardless of number of forms used):

(i) Form 314/315.....$500
(ii) Form 316.....$70
(6) Renewal.....$30

(b) Commercial Radio Stations:

(1) New or Major Change Construction Permit:
(i) AM Station.....$2,000
(ii) FM Station.....$1,800
(2) Minor Change (no fee for requests for special temporary authority, requests for extension of time and/or replacement of construction permits, requests for remote control operation, or modifications that do not require prior FCC authorization)
(i) AM.....$500
(ii) FM.....$500
(3) Hearing.....$6,000
(see paragraph (a)(3) of this section)
(4) License:
(no fee to request a modified station license to reflect changes that do not require prior FCC authorization)
(i) AM.....$325
(no fee for requests to determine power by the direct method)
(ii) AM Directional Antenna.....$375
(in addition to the AM License Fee)
(iii) FM.....$100
(5) Assignment or Transfer:
(per station, regardless of number of forms used)
(i) Forms 314/315.....$500
(ii) Form 316.....$70
(6) Renewal.....$30

(c) FM Translators:

(1) New or Major Change Construction Permit.....$375
(2) License.....$75
(3) Assignment or Transfer.....$75
(Forms 345/316; per station, regardless of number of forms used)
(4) Renewal.....$30

(d) TV Translators and LPTV Stations:

(1) New or Major Change Construction Permit.....$375
(2) License.....$75
(no fee to obtain a modified station license to reflect change in type of TV transmitter antenna or output power of TV aural or visual transmitters to accommodate a change in the antenna type or transmission line)
(3) Assignment or Transfer.....$75
(Forms 345/316; per station, regardless of number of forms used)
(4) Renewal.....$30

(e) Auxiliary Services (includes Remote Pickup stations, TV Auxiliary Broadcast stations, Aural Broadcast STL and Intercity Relay stations, and Low Power Auxiliary stations):

(1) Application.....$75
(fee for major application: new station; change in frequency, antenna system, power, and number of mobiles; relocation of stations; addition of a base station; and replacement of equipment)
(2) Renewals.....$30
(no fee for renewal of auxiliaries held by a broadcast licensee when requested in conjunction with the renewal application for its broadcast station)

(f) Cable Television Service:

(1) Cable Television Relay Service:
(i) Construction Permit.....$135
(ii) Assignment or Transfer.....$135
(Form 327; per station, regardless of number of forms used)
(iii) Renewal.....$135
(iv) Modification.....$135
(2) Cable Special Relief Petition.....$700
(fee for filings under section 76.7 of the rules seeking an exemption from the rules or the imposition of special requirements beyond those provided in the rules)

(g) Direct Broadcast Satellite:

(1) New or Major Change Construction Permit:
(i) Application.....$1,800
(a major change is considered any modification involving a significant, additional use of the orbit/spectrum resource)
(ii) Issuance of Construction Permit & Launch Authority.....$17,500
(iii) License to Operate Satellite.....$500
(2) Hearing.....$6,000
(see paragraph (a)(3) of this section)

7. Section 1.1105 is revised to read as follows:

§ 1.1105 Schedule of charges for common carrier service requests.

Except as provided elsewhere in this subpart, the charges prescribed below are required for all requests for common carrier authorizations submitted to the Commission, including requests for developmental authorizations.

(a) Domestic Public Land Mobile Stations (includes Base Dispatch, Control and Repeater Stations):

(1) New or Additional Facility (per transmitter).....$200
(2) Assignment or Transfer (per call

sign)....$200
(3) Renewal (per call sign)....$20
(4) Minor Modification (per call sign)....$20

(b) Air-Ground Individual License (per station):

(1) Initial License....$20
(2) Renewal....$20
(3) Modification....$20

(c) Cellular Systems (per system):

(1) New or Major Change Construction Permit....$200
(2) Assignment or Transfer....$200
(3) Initial covering license
(i) Wireline carrier....$525
(ii) Nonwireline carrier....$50
(4) Renewal....$20
(5) Minor modification....$50
(6) Additional license....$50

(d) Rural Radio (includes Central Office, Interoffice or Relay Facilities):

(1) Initial Construction Permit (per transmitter)....$90
(2) Assignment or Transfer (per call sign)....$90
(3) Renewal (per call sign)....$20
(4) Modification (per call sign)....$20

(e) Offshore Radio Service (fees would also apply to any expansion of this service into coastal waters other than the Gulf of Mexico):

(1) Initial Construction Permit (per transmitter)....$90
(2) Assignment or Transfer (per transmitter)....$90
(3) Renewal (per call sign)....$20
(4) Modification (per call sign....$20

(f) Domestic Public Fixed Radio Services (Part 21):

(1) Point-to-point Microwave and Local Television Radio Service—
(i) Conditional License (per station)....$135
(no fee to request special temporary authority or waiver of construction authorization requirements)
(ii) Modification of Conditional License....$135
(per station; no fee for permissive changes that do not require a modified conditional license)
(iii) Initial License for New Frequency (per station)....$135
(certification of completion of construction, in addition to fee for conditional license)
(iv) Renewal (per licensed station)....$135
(v) Assignment or Transfer (per authorized station)....$45
(2) Multipoint Distribution Service (including multichannel MDS)—
(i) Conditional License (per station)....$135
(no fee for requests for special temporary authority or a waiver of the construction authorization requirements)
(ii) Modification of Conditional License....$135
(per station; no fee for permissive changes that do not require modified conditional license)
(iii) Initial License for New Frequency....$400
(per channel; certification of completion of construction, in addition to the fee for conditional license)
(iv) Renewal (per licensed station)....$135
(v) Assignment or Transfer (per authorized station)....$45
(3) Digital Electronic Message Service–
(i) Conditional License (per nodal station)....$135
(no fee for requests for special temporary authority or a waiver of the construction authorization requirements)
(ii) Modification of Conditional License....$135
(per nodal station; no fee for permissive changes that do not require modified conditional license)
(iii) Initial License (per nodal station)....$135
(certification of completion of construction, in addition to the fee for conditional license)
(iv) Renewal (per licensed nodal station)....$135
(v) Assignment or Transfer....$45
(per authorized nodal station)

(g) International Fixed Public Radio (Public and Control Stations):

(1) Initial Construction Permit (per station)....$450
(2) Assignment or Transfer (per application)....$450
(3) Renewal (per license)....$325
(4) Modification (per station)....$325

(h) Satellite Services:

(1) Transmit Earth Stations (per earth station)—
(i) Initial Station Authorization....$1,350
(per application to construct and/or operate a domestic or international transmitting earth station for private or common carrier service or for telemetry, tracking, and command functions)
(ii) Assignment or Transfer....$450
(iii) All Other Applications....$90
(includes applications for regular or temporary authorization, renewal or modification of station authorizations, or waiver)
(2) Small Transmit/Receive Earth Stations (2 meters or less operating in the 4/6 GHz frequency band)—
(i) Lead Authorization (per application)....$3,000
(the first earth station authorization in a network)
(ii) Routine Authorization (per earth station)....$30
(requested under the terms and conditions of the lead authorization)
(iii) All Other Applications (per earth station)....$90
(includes, but is not limited to, regular or temporary authorizations, renewals, transfers, assignments, modifications, waivers, and development authority)
(3) Receive Only Earth Stations (these requests involve regular commercial receive-only earth stations for which protection from interference is being requested)—
(i) Initial Station Authorization....$200
(ii) All Other Applications....$90
(see paragraph (h)(2)(iii) of this section)
(4) Space Stations—
(i) Application for Authority to Construct....$1,800
(for domestic and international space stations, also applies to requests to construct an in-orbit or on-ground spare)
(ii) Application for Authority to Launch and Operate)....$18,000
(also applies to request launch and later operate an in-orbit spare)
(5) Satellite System Application (technically identical small earth station antennas that operate in bands where frequency coordination is not required, such as the 12/14 GHz, and interconnect with each other; fees apply to fixed-satellite systems, the radiodetermination satellite service and the mobile satellite service)—
(i) Initial Authorization (per system)....$5,000
(ii) Assignment or Transfer (per system)....$1,333
(iii) All Other Applications (per request)....$90

(i) Section 214 Applications (each 214 request to install or acquire communications channels, regardless of the number of communications channels requested, will require only one multiple of the applicable fee)

(1) Overseas Cable Construction....$8,100
(2) Domestic Cable Construction....$540
(3) All Other 214 Applications....$540
(no fee for requests to reduce or discontinue service, or 214 applications that are submitted purely for notification purposes)
(4) Telephone Equipment Registration (Part 68)....$135

(j) Tariff Filings

(1) Filing Fee....$250
(for each Tariff Publication which is accompanied by a Letter of Transmittal)
(2) Special Permission Filing (per filing)....$200

§ 1.1107 [Amended]

8. Section 1.1107 is amended by revising paragraph (b) to read as follows:

* * * * *

(b) Filings subject to a fee under this subpart that are submitted without a fee, with an insufficient fee, with a fee payment in an improper form (see § 1.1108), or with a payment instrument that is uncollectable shall be dismissed and the application returned to the applicant or its designated agent without processing. See also § 1.1114.

* * * * *

§ 1.1108 [Amended]

9. Section 1.1108 is amended by the addition of new paragraphs (b)(4) and (d), as follows:

* * * * *

(b) * * *

(4) The Commission may accept multiple money orders in payment of a fee for a single application where the fee exceeds the maximum amount for a

money order established by the issuing agency and the use of multiple money orders is the only practical method available for fee payment.

* * * * *

(d) Receipts for fee submissions will not be furnished. An applicant may request a copy of its application date stamped by the Commission. An extra copy of the application should be provided for this purpose, and those filing by mail should provide a stamped, self-addressed envelope for the return of the date stamped copy of the application. Applicants filing through frequency coordinators (see §§ 1.912 and 1.1102 of this part) may obtain a date stamped copy of their application as filed in this manner.

10. Section 1.1108 is amended by removing the "Note" at the end of the section.

§ 1.1111 [Amended]

11. Section 1.1111 is amended by adding new paragraphs (b) and (c), as follows:

* * * * *

(b) When an application for new or modified facilities is not timely filed in accordance with the filing window as established by the Commission in a public notice specifying the earliest and latest dates for filing such applications.

(c) Applicants in the Mass Media Services designated for comparative hearings will be entitled to a grant without payment of the hearing fee or a refund of the hearing fee paid in the following circumstances.

(1) When a settlement agreement filed with the presiding judge by the Notice of Appearance deadline (see § 1.221) provides for the dismissal of all but one of the applicants, and the single remaining applicant is immediately grantable, no hearing fee is due. However, if the applicant cannot be granted without resolution of matters specified in the designation order, it must pay the hearing fee. That payment will be refunded upon request if all outstanding matters can be deleted. See § 1.229.

(2) When only one applicant files a Notice of Appearance and pays the hearing fee, that single remaining applicant will be entitled to a refund of the hearing fee upon request if it is immediately grantable or if all matters specified in the designation order and requiring resolution can be deleted. See § 1.229.

(3) However, hearing fees paid pursuant to (1) or (2) above will be retained by the Commission in any case requiring a decision on the merits of an applicant's post-designation amendment or evidentiary showing, whether by Summary Decision or otherwise. See §§ 1.251 and 1.267.

§ 1.1112 [Amended]

12. Section 1.1112 is amended by revising paragraphs (a) and (e) to read as follows:

* * * * *

(a) Applications filed for the sole purpose of modifying an existing authorization (or a pending application for authorization) in order to comply with new or additional requirements of the Commission's rules or the rules of another Federal agency. However, if the applicant also requests an additional modification, renewal, or other action, the appropriate fee for such additional request must accompany the application. Cases in which a fee will be paid include applications by FM and TV licensees or permittees seeking to upgrade channel after a rulemaking.

* * * * *

(e) Other applicants, permittees, or licensees providing, or proposing to provide, a noncommercial educational or instructional service, but not qualifying under § 1.1112(c), may be exempt from filing fees, or be entitled to a refund, in the following circumstances.

(1) An applicant is exempt from filing fees if it is an organization that, like the Public Broadcasting Service or National Public Radio, receives funding directly or indirectly through the Public Broadcasting Fund, 47 U.S.C. 396(k), distributed by the Corporation for Public Broadcasting, where the authorization requested will be used in conjunction with the organization on a noncommercial educational basis;

(2) An applicant for a translator or low power television station that proposes a noncommercial educational service will be entitled to a refund of fees paid for the filing of the application when, after grant, it provides proof that it has received funding for the construction of the station through the National Telecommunications and Information Administration (NTIA) or other showings as required by the Commission.

(3) An applicant that has qualified for a fee refund under § 1.1112(e)(2) and continues to operate as a noncommercial education station is exempt from fees for broadcast auxiliary stations (Subparts D, E, and F of Part 74) or stations in the private radio or common carrier services where such authorization is to be used in conjunction with the noncommercial educational translator or low power station.

(4) An applicant that is the licensee of an instructional television fixed station (§ 74.901 *et seq.*) is exempt from filing fees where the authorization requested will be used by the applicant in conjunction with the provision of the instructional service.

* * * * *

§ 1.1114 [Amended]

13. Section 1.1114 is amended by revising paragraph (a), as follows:

(a) Filings subject to fees and accompanied by defective fee submissions will be dismissed under § 1.1107(b) of this subpart where the defect is discovered by the Commission's staff within 30 calendar days from the receipt of the application or filing by the Commission.

(1) A defective fee may be corrected by resubmitting the application or other filing, together with the entire correct fee.

(2) For purposes of determining whether the filing is timely, the date of resubmission with the correct fee will be considered the date of filing. However, in cases where the fee payment fails due entirely to bank error, the date of the original submission will be considered the date of filing.

* * * * *

§ 1.1116 [Amended]

14. Section 1.1116 is amended by designating the present text as paragraph (a) and adding a new paragraph (b), as follows:

(a) * * *

(b) Actions taken by the Fee Section staff are subject to the reconsideration and review provisions of §§ 1.106 and 1.115 of this part, EXCEPT THAT reconsideration and/or review will only be available where the applicant has made the full and proper payment of the underlying fee as required by this subpart.

(1) Petitions for reconsideration and/or applications for review submitted by applicants that have not made the full and proper fee payment will be dismissed; and

(2) If the fee payment should fail while the Commission is considering the matter, the petition for reconsideration or application for review will be dismissed.

[FR Doc. 88-24093 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-108; RM-6085]

Radio Broadcasting Services; Yreka, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 249C2 for Channel 249A at Yreka, California, and modifies the Class A license of Dalmatian Enterprises, Inc. for Station KYRE(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 249C2 at Yreka are 41-36-37 and 122-37-127. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 18, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-108, adopted September 9, 1988, and released October 3, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments for Yreka, California, is amended by removing Channel 249A and adding Channel 249C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24144 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-601 RM-5950]

Radio Broadcasting Services; Galliano, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 232C2 for Channel 232A at Galliano, Louisiana, and modifies the license of Station KBAU(FM) to specify operation on the higher class co-channel, at the request of Callais Broadcasting, Inc. This action provides Galliano with its first wide coverage area FM service. A site restriction of 27.9 kilometers (13.3 miles) west of the community is required. The restricted site coordinates are 29-24-19 and 90-35-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-601, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73,202(b), the Table of FM Allotments is amended, under Louisiana, by removing Channel 232A and adding Channel 232C2 at Galliano.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24139 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-47; RM-5977, RM-6148, RM-6364, RM-6365]

Radio Broadcasting Services; Oakdale, Tioga, and West Monroe, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 254C2 for 285A at Oakdale, Louisiana, and modifies the license of Station KICR-FM to specify operation on the higher class channel, as requested by Oakdale Limited Partnership. This action also substitutes Channel 278C2 for Channel 252A at Tioga, Louisiana, and modifies the license of Station KISY(FM) to reflect operation on the higher class channel, at the request of Cavaness Broadcasting, Inc. Channel 254C2 requires a site restriction of 7.5 kilometers (4.6 miles) northeast of Oakdale. The restricted site coordinates are 30-51-42 and 92-36-52. Channel 278C2 also requires a site restriction of 11.2 kilometers (7 miles) northeast of Tioga. The restricted site coordinates are 31-28-18 and 92-22-17. Oakdale and Tioga will be provided with a first wide coverage area FM service. The substitution of Channel 252C2 for Channel 252A at West Monroe, Louisiana (RM-6365), will be the subject to a *Second Report and Order*. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 30, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's First Report and Order, MM Docket No. 88-47, adopted September 7, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Louisiana by adding Channel 254C2 and removing Channel 285A at Oakdale; and adding Channel 278C2 and removing Channel 252A at Tioga.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24138 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-306; RM-5837, RM-6120, and RM-6121]

Radio Broadcasting Services; Albert Lea, Red Wing, and Stewartville, MN

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes FM Channel 235C2 for Channel 237A at Albert Lea, Minnesota and modifies the license of Station KCPI-FM. This action is taken in response to a petition filed by Communications Properties, Inc. The coordinates for Channel 235C2 at Albert Lea are 43-51-48 and 93-09-48. To accommodate the upgrade at Albert Lea, it is necessary to make substitutions in two other Minnesota communities. Channel 290A can be substituted for Channel 288A at Red Wing at the current site of Station KWNG. The coordinates for Channel 290A at Red Wing are 44-32-20 and 92-31-25. Channel 287C2 can be substituted for vacant Channel 235A at Stewartville with a site restriction 23.1 kilometers southwest of the community. The coordinates for Channel 287C2 at Stewartville are 43-43-09 and 92-42-12. Channel 235A at Stewartville was made available for filing applications in Window Number 68 which opened on May 12, 1988 and closed on June 16, 1988. The Public Notice announcing the acceptance of applications for Stewartville indicated the possibility of an upgrade and explained that if the proposal was adopted, applicants for the Class A channel would be required to specify the higher class channel and would be afforded cut-off protection against any applications not filed during this window. The Commission will not open another window for the Class C2 channel at Stewartville as public notice has been given of the channel upgrade. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 21, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-306, adopted September 1, 1988, and released October 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments, is amended under Minnesota, by removing Channel 237A and adding Channel 235C2 at Albert Lea, by removing Channel 288A and adding Channel 290A at Red Wing, and by removing Channel 235A and adding Channel 287C2 at Stewartville.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24140 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

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47 CFR Part 73

[MM Docket No. 87-209, RM-5700, RM-5768, RM-5926, RM-6079, RM-6080]

Radio Broadcasting Services; New Ulm, Bryan, Huntsville, Cameron, Creedmoor, and La Grange, TX

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 222A to New Ulm, Texas, and Channel 235A to Huntsville, Texas, as requested by New Ulm Broadcasting and Carolyn G. Vance, respectively. The new allotments could provide a first local FM service at New Ulm and Huntsville with its second local FM service. In addition, this action substitutes Channel 284C2 for Channel 285A at Bryan, Texas, and modifies the license of Station KKYS(FM) to specify operation on the higher class adjacent channel, at the request of Radio U.S.A. Ltd.; and substitutes Channel 280C2 for Channel 276A at Cameron, Texas, and modifies the license of Station KCRM(FM) to specify operation on the higher class non-adjacent channel, at the request of KCRM Broadcasting, Inc. A first wide coverage area FM service could be provided to both Bryan and Cameron. Channel 222A at New Ulm requires a site restriction of 4.0 kilometers (2.5 miles) west of the community, at coordinates 29-54-09 and 96-31-45. Channel 235A at Huntsville, Texas, requires a site restriction of 5.5 kilometers (3.4 miles) northwest of the city, at coordinates 30-43-24 and 95-33-00. The substitution of Channel 284C2 at Bryan requires the transmitter site for Station KYYS(FM) to be relocated to a site 5.8 kilometers (3.6 miles) north of the city at coordinates 30-43-30 and 96-21-30. The current transmitter site of Station KCRM(FM) can be used for the Channel 280C2 substitution, at coordinates 30-45-16 and 96-54-30. This action further dismisses the petition of Don Werlinger, d/b/a The Broadcast Development Group, Inc. (RM-6079), proposing to allot Channel 285A to Creedmoor, Texas, at its request. With this action, this proceeding is terminated.

DATES: Effective November 21, 1988; the window period for filing applications for Channel 222A at New Ulm, Texas and Channel 235A at Huntsville, Texas, will open on December 22, 1988, and close on December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-209, adopted September 14, 1988, and released October 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Texas by adding New Ulm, Channel 222A, by adding Channel 235A at Huntsville; by removing channel 285A and adding Channel 284C2 at Bryan; and by removing channel 276A and adding Channel 280C2 at Cameron.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24142 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-544; RM-6070, RM-6255]

Radio Broadcasting Services; Ravenswood and Spencer, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 284A to Spencer, West Virginia, as that community's first FM service, at the request of Star Communications Inc. The allotment requires a site restriction of 3.6 kilometers (2.3 miles) northeast of Spencer at coordinates 38-49-31 and 81-19-21. This action also dismisses a petition filed by Ohio River Broadcasting (RM-6070), proposing the allotment of Channel 284A to Ravenswood, West Virginia, due to a lack of continuing interest in the proposal. With this action, this proceeding is terminated.

DATES: Effective November 21, 1988; the window period for filing applications will open on November 22, 1988, and close on December 22, 1988.

FOR FURTHER INFORMATION CONTACT: Particia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-544, adopted September 14, 1988, and released October 4, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under West Virginia, by adding Channel 284A, Spencer.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24141 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 88-73; RM-6244]

Radio Broadcasting Services; Ouray, CO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 289C2 for Channel 285A at Ouray, Colorado, and modifies the Class A license of Ouray Broadcasting Co., Inc. for Station KURA(FM), as requested, to specify operation on the higher class channel, thereby providing that community with its first wide coverage area FM service. Reference coordinates for Channel 289C2 at Ouray are 38-10-54 and 107-46-29. With this action, the proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-73, adopted September 9, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1910 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

In § 73.202(b), the Table of FM Allotments for Ouray, Colorado, is amended by removing channel 285A and adding Channel 289C2.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24152 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-438; RM-5894]

Radio Broadcasting Services; West Palm Beach, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of J. J. Taylor Companies, Inc. substitutes Channel 282C for Channel 282C1 at West Palm Beach, Florida, and modifies its license for Station WEAT-FM to specify the higher powered channel. Channel 282C can be allotted to West Palm Beach in compliance with the Commission's minimum distance separation requirements with a site restriction of 26.5 kilometers (16.5 miles) southwest. The coordinates for this allotment are North Latitude 26-30-00 and West Longitude 80-10-00. With this action, this proceeding is terminated.

EFFECTIVE DATE: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-438, adopted September 1, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the FM Table of Allotments for West Palm Beach, Florida is amended by removing Channel 282C1 and adding Channel 282C.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24151 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-593; RM-6049]

Radio Broadcasting Services; Baker, LA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 297A to Baker, Louisiana, as that community's first FM service, at the request of Jeffrey G. Welsh. The allotment can be used at the reference coordinates, which are 30-35-18 and 91-10-06. With this action, this proceeding is terminated.

DATES: Effective November 14, 1988; the window period for filing applications will open on November 15, 1988, and close on December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-593, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended, under Wisconsin, by removing Channel 296A and adding Channel 296C2 at New Richmond.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24149 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-555; RM-6077]

Radio Broadcasting Services; New Richmond, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 296C2 for Channel 296A at New Richmond, Wisconsin, and modifies the license of Station WIXK-FM to specify operation on the higher class frequency, as requested by Smith Broadcasting, Inc. The channel substitution could provide New Richmond with its first wide coverage area FM service. The station's current transmitter site must be relocated to a restricted site 21.1 kilometers (13.1 miles) northeast of the community, at coordinates 45-16-03 and 92-21-34. Concurrence has been obtained from the Canadian government. With this action, this proceeding is terminated.

EFFECTIVE DATES: November 14, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-555, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Louisiana by adding Channel 297A, Baker.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24146 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 87-524; RM-6020]

Radio Broadcasting Services; Verona, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 268A to Verona, Wisconsin, as that community's first FM service, at the request of Son Communications of Madison, Wisconsin. The allotment can be made consistent with the Commission's minimum distance separation requirements at the reference coordinates, which are 42-59-24 and 89-32-00. With this action, this proceeding is terminated.

DATES: Effective November 14, 1988; the window period for filing applications will open on November 15, 1988, and close on December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-524, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Wisconsin by adding Channel 288A, Verona.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24147 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-174; RM-6283]

Radio Broadcasting Services; Waunakee, WI

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 286A to Waunakee, Wisconsin, as that community's first FM service, at the request of WIBU, Inc. A restricted site 5.7 kilometers (3.5 miles) northeast of the community is required at the coordinates 43-12-34 and 89-23-28. With this action, this proceeding is terminated.

DATES: Effective November 14, 1988; the window period for filing applications will open on November 15, 1988, and close on December 15, 1988.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 88-174, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for Part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. In § 73.202(b), the Table of FM Allotments is amended under Wisconsin by adding Channel 286A, Waunakee.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24148 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 90

[PR Docket No. 878-312]

Amendment Of Commission's Rules To Permit Commercial Enterprises To Be Licensed Directly in the Special Emergency Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Order extending comment period for oppositions to petitions for reconsideration.

SUMMARY: In response to a Motion for Extension of Time filed by ProNet, the Commission adopted an Order extending the time period in which to file oppositions to the petitions for reconsideration in this proceeding.

DATES: Oppositions to the petitions for reconsideration are due by September 28, 1988; Replies to oppositions are due by November 3, 1988.

FOR FURTHER INFORMATION CONTACT: Irene Bleiweiss, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634-2443.

SUPPLEMENTARY INFORMATION: Notice of the petitions for reconsideration was published on August 29, 1988 at 53 FR 32940.

As a result of an oversight, this document was not published in a timely fashion. Because of this, the period for replies has been extended beyond the usual point of ten days after oppositions are due.

Order Extending Comment Period

Adopted: September 14, 1988.
Released: October 3, 1988.

By the Acting Chief, Private Radio Bureau.

1. On May 18, 1988, the Commission adopted a *Report and Order* in the above captioned matter. This *Report and Order* appeared in the **Federal Register**, 53 FR 25607, on July 8, 1988. Timely petitions for reconsideration were received from Associated Public-Safety Communications Officers, Inc., the International Municipal Signal Association, the International Association of Fire Chiefs, Inc., and the National Association of State EMS Directors. Public notice of the petitions for reconsideration appeared in the **Federal Register**, 53 FR 32940, on August 29, 1988. Oppositions to the petitions for reconsideration were due by September 14, 1988.

2. On September 9, 1988, ProNet filed a request to extend the time period for filing oppositions in this proceeding to September 28, 1988. ProNet, the original proponent of this rule making states that it can provide the Commission with valuable information regarding the issues under consideration if it is given additional time in which to consult with entities in the medical community. Counsel for the parties who filed the petitions for reconsideration do not object to the extension.

3. We recognize the importance of input from the medical community in this proceeding. Therefore, to permit the gathering of adequate information from such entities we are extending the period in which to file oppositions. This action will assure a complete record in this proceeding.

4. Accordingly, *it is ordered,* pursuant to the authority set forth in § 0.331 of the Commission's Rules and Regulations, that interested parties will have until September 28, 1988, to file oppositions to the petitions for reconsideration in this proceeding. Replies to oppositions will be due by November 3, 1988.

Federal Communications Commission.

Beverly G. Baker,

Acting Chief, Private Radio Bureau.

[FR Doc. 88-24091 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 71147-8002]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of inseason adjustment.

SUMMARY: NOAA announces the apportionment of amounts of yellowfin sole from domestic fishermen processing fish or delivering fish to domestic processors (DAP) to domestic fishermen delivering fish to foreign processors (JVP). This action, taken under provisions of the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands

(BSAI), assures optimum use of of groundfish in the yellowfin sole fishery and in other directed fisheries that take yellowfin sole as bycatch.

DATES: Effective: October 14, 1988. Comments will be accepted through October 31, 1988.

ADDRESS: Comments should be mailed to James W. Brooks, Acting Director, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802, or delivered to Room 453, Federal Building, 709 West Ninth Street, Juneau, Alaska.

FOR FURTHER INFORMATION CONTACT: Mike Sigler, Fishery Research Biologist, NMFS, 097–586–7229.

SUPPLEMENTARY INFORMATION: Rules appearing at 50 CFR 611.93 and Part 675 implement the FMP.

Initially, 15 percent of the 1988 total allowable catch (TAC) for each species or species group in the BSAI area was placed in reserve, DAP was specified, and remaining amounts were provided to JVP (53 FR 894, January 14, 1988). No amount of groundfish was provided for foreign harvest because U.S. fishermen are able to harvest the entire 1988 TAC.

The following inseason actions have reapportioned amounts from the reserve to DAP, JVP, or both, or amounts from DAP to JVP: April 19 (53 FR 12772), May 10 (53 FR 16552), May 25 (53 FR 18841), June 22 (53 FR 23402), July 14 (53 FR 26599), July 27 (53 FR 28229), August 30 (53 FR 33140), September 9 (53 FR 35081), October 3 (53 FR 38725) (sablefish), and October 5 (53 FR 39097) (other rockfish).

The Acting Director, Alaska Region, NMFS, has determined from fishery information, including DAP catch to date and a recent survey of DAP processors, that the amount of yellowfin sole assigned to DAP in the BSAI area will not be reached before the end of 1988. Accordingly, 8,850 mt of DAP are reapportioned to JVP. With this action, the JVP apportionment of 203,544 mt is increased to 212,394 mt.

These apportionments will not result in overfishing of yellowfin sole because the sum of the adjusted DAP amount and the JVP amount for yellowfin sole does not exceed the allowable biological catch (ABC) for this species.

TABLE 1.—BERING SEA AND ALEUTIAN ISLANDS AREA (BSAI) REAPPORTIONMENTS OF INITIAL TAC

[All values are in metric tons]

		Current	This action	Revised
BSAI yellowfin sole:				
TAC=254,000	DAP	24,356	−8,850	15,506
	JVP	203,544	+8,850	212,394
BSAI all species:				
	DAP	709,023	−8,850	700,173
	JVP	1,282,784	+8,850	1,291,634
	Reserve	8,193	[1]	8,193
	Total (TAC)	2,000,000		

[1] No change.

Classification

This action is taken under the authority of 50 CFR 675.20(b) and complies with Executive Order 12291.

The Assistant Administrator for Fisheries finds for good cause that it is impractical and contrary to the public interest to provide prior notice and comment. Immediate effectiveness of this notice will allow JVP fishermen to continue directed fishing for yellowfin sole. Interested parties are invited to submit comments in writing to the address above for 15 days after the effective date of this notice, in accordance with § 675.20(b)(2)(i).

List of Subjects in 50 CFR Part 675

Fish, Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: October 14, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management.

[FR Doc. 88–24183 Filed 10–14–88; 4:26 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 53, No. 202
Wednesday, October 19, 1988

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1750

Acquisitions, Mergers, and Consolidations; Telephone Program

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to add Part 1750, Acquisitions, Mergers, and Consolidations—Telephone Program, to 7 CFR Chapter XVII. This new part consolidates, revises, and clarifies the policies, requirements, and procedures presently contained in various REA publications pertaining to acquisitions, mergers, and consolidations, including the following REA Bulletins:

320–4 Preloan Procedures for Telephone Loan Applicants
325–1 Financing Lines, Facilities, or Systems Outside of Rural Areas
326–1 Acquisitions of Telephone Facilities and Systems

The above Bulletins also contain certain other policies, requirements, and procedures that will be incorporated into other CFR parts. These Bulletins will then be rescinded.

Part 1750 sets forth the provisions and requirements of the RE Act and the REA administrative policies, requirements, and procedures concerning the acquisition, merger, or consolidation of telephone facilities and systems. The primary objectives of the proposed rule are to update, consolidate, clarify, and simplify REA policies and procedures; to lessen the paperwork burden on borrowers; and to decrease processing time by REA.

All borrowers that are parties to an acquisition, merger, or consolidation will be affected by this rule.

DATE: Public comments concerning this proposed rule must be received by REA no later than November 18, 1988.

ADDRESS: Comments may be mailed to F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250. Comments received may be inspected in Room 2250 between 8:15 a.m. and 4:45 p.m.

FOR FURTHER INFORMATION CONTACT: F. Lamont Heppe, Jr., Chief, Loans and Management Branch, Telecommunications Staff Division, Rural Electrification Administration, Room 2250, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 382–9550. The Draft Regulatory Impact Analysis describing the options considered in developing this rule is available on request from the above named individual.

SUPPLEMENTARY INFORMATION: This rule is issued in conformity with Executive Order 12291, Federal Regulation. This action will not (1) have an annual effect on the economy of $100 million or more; (2) result in a major increase in costs or prices for consumers, individual industries, Federal, state or local government agencies, or geographic regions; or (3) result in significant adverse effects on competition, employment, investment or productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets. Therefore, this rule has been determined to be "not major."

This action does not fall within the scope of the Regulatory Flexibility Act. REA has concluded that promulgation of this rule would not represent a major Federal action significantly affecting the quality of the human environment under the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.* (1976)) and, therefore, does not require an environmental impact statement or an environmental assessment.

This program is listed in the Catalog of Federal Domestic Assistance under No. 10.851, Rural Telephone Loans and Loan Guarantees, and 10.852, Rural Telephone Bank Loans. For the reasons set forth in the final rule related Notice to 7 CFR Part 3015, Subpart V (50 FR 47034, November 14, 1985) this program is excluded from the scope of Executive Order 12372 which requires intergovernmental consultation with State and local officials.

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3507), the reporting and recordkeeping provisions that are included in these proposed rules have been submitted for approval to the Office of Management and Budget (OMB). The will not be effective until approved by OMB.

Public reporting burden for this collection of information is estimated to average 16 hours per response including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Agriculture, Clearance Officer, OIRM, Room 404–W, Washington, DC 20250; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for REA, Washington, DC 20503.

Background

Currently, the policies and requirements concerning the acquisition, merger, or consolidation of the telephone facilities and systems are contained in numerous REA Bulletins and REA Staff Instructions (internal instructions for REA personnel). Many of these are outdated and contain conflicting information. It is necessary to consolidate the information and make it available to the public by publishing it in the **Federal Register.**

This proposed rule eliminates some reporting requirements and streamlines others, reducing the borrowers' burden, while permitting REA to maintain the security of the Government's loans.

REA will no longer (1) place a valuation on facilities acquired with funds other than loan funds, nor (2) permit loan funds to be used to acquire any stock or telephone plant in service or under construction of an affiliated company. Additionally, REA Forms 507, "Report on Telephone Acquisition," and 507a, "Report on Telephone Acquisitions—by Exchange," have been combined and considerably shortened.

Article II, section 15(c), of the mortgage, which applies to each borrower with an adjusted net worth of

less than 20 percent of its adjusted assets, includes certain requirements in the event of a change in ownership interests of the borrower, which in the sole opinion of the majority noteholders might adversely affect their security. Currently, these requirements are normally applied if the ownership and control of a borrower is to be transferred to a non-operating holding company. As proposed, transfer of ownership to a non-operating holding company, in and of itself, will not be considered to have an adverse effect on REA's security.

7 CFR Part 1750 supersedes any sections of REA Bulletins with which it is in conflict.

List of Subjects in 7 CFR Part 1750

Loan programs—communications, Telecommunications, Telephone.

Therefore, REA proposes to amend 7 CFR Chapter XVII by adding the following new Part 1750:

PART 1750—ACQUISITIONS, MERGERS, AND CONSOLIDATIONS—TELEPHONE PROGRAM

Subpart A—General

Sec.

1750.1 General statement.
1750.2 REA field representative assistance.
1750.3 Definitions.
1750.4 Availability of forms.

Subpart B—Mortgage Controls on Acquisitions and Mergers

1750.10 Specific provision.
1750.11 Approval of criteria.
1750.12 Approval of acquisitions and mergers.

Subpart C—Acquisitions Involving Loan Funds

1750.20 Use of loan funds.
1750.21 Nonrural areas.
1750.22 Acquisition agreements.
1750.23 Loan design.
1750.24 Submission of data.
1750.25 Interim financing.
1750.26 Acquisition of affiliates.
1750.27 Release of loan funds, requisitions, advances.

Subpart D—Acquisitions or Mergers Not Involving Additional Loan Funds

1750.30 Submission of data.

Subpart E—Requirements for all Acquisitions and Mergers

1750.40 Preliminary approvals.
1750.41 Location of facilities.
1750.42 Accounting considerations.
1750.43 Notes.
1750.44 Final approval and closing procedure.
1750.45 Unadvanced loan funds.

Subpart F—Toll Line Acquisitions

1750.50 Use of loan funds.
1750.51 With nonloan funds.

Authority: 7 U.S.C. 901 *et seq.*, 7 U.S.C. 1921 *et seq.*

Subpart A—General

§ 1750.1 General statement.

(a) The standard REA loan security documents (see 7 CFR Part 1758) contain provisions regarding acquisitions, mergers, and consolidations. This CFR part implements those provisions by setting forth the policies, procedures, and requirements for telephone borrowers planning to acquire existing telephone lines, facilities, or systems with REA loan or other funds, or planning to merge or consolidate with another system. This CFR part supersedes all REA Bulletins that are in conflict with it.

(b) This CFR part also details REA's requirements with respect to mergers and acquisitions involving REA loan funds.

(c) Suggested guideline for borrowers planning acquisitions, mergers, or consolidations are provided in Telecommunications Operations Manual (TOM) section 1026.

§ 1750.2 REA field representative assistance.

Borrowers contemplating acquisitions or mergers should first discuss their plans with the REA general field representative who will provide advice and assistance.

§ 1750.3 Definitions.

As used in this part.

(a) "Acquisition" means the purchase of another telephone system, lines, or facilities whether by acquiring telephone plant in service or majority stock interest of one or more organizations.

(b) "Acquisition agreement" means the agreement, including a sales agreement, between the seller and purchaser outlining the terms and conditions of the acquisition. Acquisition agreements also include any other agreements, such as options and subsidiary agreements relating to terms of the transaction.

(c) "Adjusted assets" has the meaning as defined in Article II, section 15(d) of the standard REA mortgage. See 7 CFR Part 1758.

(d) "Adjusted net worth" has the meaning as defined in Article II, section 15(d) of the standard REA mortgage. See 7 CFR Part 1758.

(e) "Administrator" means the Administrator of REA.

(f) "Affiliate" means an organization that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the borrower.

(g) "Borrower" means any organization which has an outstanding loan made or guaranteed by REA, or which is seeking such financing.

(h) "Consolidation" means the combination of two or more borrower or nonborrower organizations, pursuant to state law, into a new successor organization that takes over the assets and assumes the liabilities of those organizations.

(i) "Construction fund" means the REA Construction Account required by section 2.4 of the standard loan contract into which all REA loan funds are advanced. See 7 CFR Part 1758.

(j) "Interim financing" means funding for a project the borrower desires to be financed by an REA loan but for which no REA loan funds have been made available.

(k) "Loan" means any loan made or guaranteed by REA.

(l) "Loan contract" means the loan agreement between REA and the borrower, including all amendments thereto.

(m) "Loan funds" means funds provided by REA through direct or guaranteed loans.

(n) "Majority noteholders" means the holder or holders of a majority in principal amount of the notes outstanding at a particular time.

(o) "Merger" means the combining, pursuant to state law, of one or more borrower or nonborrower organizations into an existing survivor organization that takes over the assets and assumes the liabilities of the merged organizations. While the terms merger and consolidation have different meanings, for the purpose of this part, "mergers" also include consolidations as defined above. Furthermore, "mergers" also include acquisitions where the acquired systems, lines, or facilities and the acquiring system are operated as one system.

(p) "Mortgage" means the security agreement between REA and the borrower, including any amendments and supplements thereto.

(q) "Rural area" means any area of the United States not included within the boundaries of any incorporated or unincorporated city, village or borough having a population exceeding 1,500. The population figure is obtained from the most recent data available from the Bureau of the Census and Rand McNally and Company. The determination of whether an area is rural is based on the population within the corporate limits or boundaries of unincorporated areas in existence at the time the facilities to serve the community were first financed by REA. If a community is considered

rural at that time, it will always be considered rural.

(r) "Survivor" means (1) the successor corporation formed by the consolidation of one or more borrowers, (2) the corporation remaining after completion of a major involving one or more borrowers, and (3) a corporation assuming all or a portion of an REA loan in connection with an acquisition.

(s) "Telephone service" means any communication service for the transmission of voice, sounds, signals, pictures, writing, or signs of all kinds through the use of electricity between the transmitting and receiving apparatus, and includes all telephone lines, facilities, or systems used to render such service. It does not mean (1) message telegram service, (2) community antenna television system services or facilities other than those intended exclusively for educational purposes, or (3) radio broadcasting services or facilities within the meaning of section 3(o) of the Communications Act of 1934, as amended.

§ 1750.4 Availability of forms.

Single copies of REA forms and publications cited in this part are available from Administrative Services Division, Rural Electrification Administration, United States Department of Agriculture, Washington, DC 20250. These REA forms and publications may be reproduced.

Subpart B—Mortgage Controls on Acquisitions and Mergers

§ 1750.10 Specific provisions.

(a) The standard form of REA mortgage (see 7 CFR Part 1758) contains certain provisions concerning mergers and acquisitions:

(1) Article II, section 4(a) requires the borrower to obtain the written approval of the majority noteholders before taking any action to reorganize, or to consolidate with or merge into any other corporation.

(2) Article II, section 4(b), if made applicable, provides certain exceptions to the requirements of section 4(a).

(3) Article II, section 15(c), which applies to each borrower with an adjusted net worth of less than 20 percent of its adjusted assets, sets forth, among other matters, certain requirements in the event of a change in ownership interests of the borrower, which in the sole opinion of the majority noteholders might adversely affect its or their security.

(b) Similar provisions are contained in other forms of documents executed by borrowers that have not entered into the standard form of mortgage.

(c) Mortgages and loan contracts may contain other provisions concerning mergers and acquisitions.

§ 1750.11 Approval criteria.

(a) If a borrower is required by the terms of its mortgage or loan contract to obtain REA approval of a merger or acquisition, the borrower shall request REA approval and shall provide REA with such data as REA may request.

(b) If loan funds are requested, the borrower shall comply with Subpart C of this part. If no additional loan funds are involved, the borrower shall comply with Subpart D of this part.

(c) In considering whether to approve the request, REA will take into account, among other matters:

(1) Whether the operation, management, and the economic and loan repayment feasibility characteristics of the proposed system are satisfactory;

(2) Whether the merger or acquisition may result in any relinquishment, impairment, or waiver of a right or power of the Government;

(3) Whether the proposed merger or acquisition is in the best interests of the Government as note holder; and

(4) Whether the proposed purchase price and terms of an acquisition are reasonable, regardless of the source of funds used to pay for the purchase. REA will consider the purchase price unreasonable if, in REA's opinion, it will require excessive rates to be paid by the subscribers for telephone service or endanger financial feasibility.

§ 1750.12 Approval of acquisitions and mergers.

(a) If a proposal is unsatisfactory to REA, then REA shall inform the borrower in writing of those features it considers objectionable and present recommended corrective action, if appropriate.

(b) If a proposal is satisfactory to REA, then REA shall inform the borrower in writing of its approval and any conditions of such approval. Among the conditions of approval are the following:

(1) REA shall require a compensating benefit in return for any relinquishment, impairment, or waiver of its rights or powers.

(2) If the survivor is an affiliate of another company, REA shall require that any investments in, advances to, accounts receivable from, and accounts payable to the affiliated company contrary to mortgage provisions shall be eliminated in a manner satisfactory to the Administrator.

(3) REA requires that the borrower agree not to extend credit to, perform services for, or receive services from any affiliated company unless specifically authorized in writing by the Administrator or pursuant to contracts satisfactory in form and substance to the Administrator.

(4) REA may require the borrower to execute additional mortgages, loan agreements, and associated documentation.

Subpart C—Acquisitions Involving Loan Funds.

§ 1750.20 Use of loan funds.

(a) See 7 CFR Parts 1745 and 1749 for REA's general loan policies and requirements.

(b) REA will finance an acquisition by a borrower only when the acquisition is necessary and incidental to furnishing or improving rural telephone service and the service area is eligible for REA assistance.

(c) REA does not make loans for the sole purpose of merging or consolidating telephone organizations.

(d) REA will not consider making a loan for the acquisition of an existing borrower unless the likelihood of repayment of an outstanding REA loan.

(e) In determining the amount it will lend for each acquisition, REA shall place a valuation on all telephone facilities that are to be acquired with loan funds. REA may consider fair market value, the original cost less depreciation of the facilities, income generating potential, any improvement in the financial strength of the borrower as a result of the acquisition, and any other factors deemed relevant by REA to determine the reasonableness of the acquisition price and the amount of loan funds REA will provide for an acquisition. REA shall not consider the acquisition price reasonable nor approve a loan if, in the Administrator's opinion, the acquisition price will require excessive rates to be paid by the subscribers for telephone service or endanger financial feasibility. If the acquisition price exceeds the amount REA will lend, the borrower provides the remainder.

(f) When a borrower intends to request REA loan funds for an acquisition, it shall present a proposal in writing to the Area Office as soon as possible. The borrower must either obtain REA approval *prior* to making any binding commitments with the seller or make the commitments subject to REA's approval. Failure to comply with these requirements will disqualify the borrower from obtaining an REA loan for the acquisition unless the

Administrator determines there were extenuating circumstances.

§ 1750.21 Nonrural areas.

Loan funds may be approved for the acquisition and improvement of facilities to serve nonrural subscribers only if the principal purpose of the loan is to furnish and improve rural service and only if the use of loans funds to serve nonrural subscribers is necessary and incidental to the principal purpose of the loan. For example, when the acquisition of an existing system located in and serving a nonrural area is necessary to serve as the nucleus of an expanded system to furnish area coverage service in rural areas, the loan may include funds to finance the acquisition. Approval for the use of loan funds in these circumstances shall be made only on a case by case basis by the Administrator.

§ 1750.22 Acquisition agreements.

When borrowers are seeking REA financing, acquisition agreements between the borrower and the seller must be in form and substance satisfactory to REA and shall be expressly conditioned on approval of the agreement by REA and on obtaining an REA loan. Normally, the acquisition agreement will not be approved by REA until the loan has been approved.

§ 1750.23 Loan design.

When loan funds are requested for an acquisition, details of the proposed acquisition shall be included in the Loan Design. See 7 CFR Part 1749.

§ 1750.24 Submission of data.

(a) REA will not approve acquisition, other than for toll facilities (see Subpart F of this part), financed in whole or in part with loan funds until the borrower submits the following data to the REA general field representative:

(1) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant account, reports to the state commission, and audits, if available.

(2) Completed REA Form 507, "Report on Telephone Acquisition."

(3) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(4) Plans for incorporating the acquired facilities into the borrower's existing system.

(5) The number of subscribers currently receiving service in the area to be acquired and the number of new subscribers that will be served over the next 5 years as a result of the acquisition.

(6) The proposed purchase price.

(7) Two copies of any options, bills of sale, or deeds, and four copies of any acquisition agreements. All of these documents are subject to REA approval. If the acquisition agreement is approved by REA, two copies of it shall be returned to the borrower.

(8) An appraisal by the borrower's consulting engineer or other qualified person of the physical plant to be acquired. The appraisal shall include the following:

(i) Inspection of each central office, noting the age and condition of the switch and associated equipment, and the extent and quality of maintenance of the equipment and premises.

(ii) Inspection of the outside plant, noting the general age and condition of cable and wire, poles and related hardware, pedestals, and subscriber drops. Any joint use or ownership shall be explained.

(iii) Inspection of miscellaneous items such as commercial office facilities, vehicles, furniture, tools and work equipment, and materials and supplies in stock, noting age and condition.

(iv) Inspection of all buildings and other structures (such as radio towers), noting age and condition.

(v) Detailed description of all real estate indicating the present market value that local real estate dealers, bankers, insurance agents, etc. place on the property.

(vi) In estimating the condition of the facilities in paragraph (a)(8)(i) through (a)(8)(iv) of this section, any widely accepted method, subject to REA approval, may be used. The "percent condition" method is recommended. See TOM section 1026 for details.

(9) Copies of deeds to real estate to be acquired, with an explanation of the proposed use of the land.

(10) Copies of leases to be acquired.

(11) Copies of any existing mortgages with parties other than REA, indentures, deeds of trust, or other security documents or financing agreements relating to the property to be acquired and any contracts or other rights or obligations to be assumed as part of the acquisition.

(12) A list of all counties in which the proposed system will have facilities.

(13) If the borrower is a cooperative-type organization, a description of its plans for taking subscribers in as members, membership fees, equity payments required because of the acquisition, and extent of membership support.

(14) Any other data deemed necessary by the Administrator for an evaluation of the acquisition.

(b) For stock acquisitions, the borrower shall submit the following in addition to the items listed in Paragraph (a) of this section.

(1) A list of all stockholders of the company to be acquired and the number of shares each owns.

(2) Guarantees and indemnifications to be obtained from the sellers of the stock.

§ 1750.25 Interim financing.

(a) A borrower may submit a written request for REA approval of interim financing if it is necessary to close an acquisition before the loan to finance the acquisition is approved and the borrower has or can obtain funds for the acquisition from a source other than REA. Loan funds shall not be used to reimburse acquisition costs unless REA has granted approval of interim financing prior to the closing of the acquisition.

(b) REA will approve interim financing of acquisitions only in cases where loan funds cannot be made available in time for the closing.

(c) REA will not approve interim financing until it has found the following information acceptable:

(1) A written request for approval of interim financing, including a brief description of the acquisition; an explanation of the urgency of proceeding with the acquisition, and the source of funds to be used.

(2) A completed REA From 490, "Application for Telephone Loan or Loan Guarantee." See 7 CFR Part 1749.

(3) The portions of the Loan Design that cover the proposed acquisition, including cost estimates and information on any investments in nonrural areas. See 7 CFR Part 1749.

(4) The information required in § 1750.24 (a)(1) through (a)(7) and (b)(1).

(5) Any other data deemed necessary by the Administrator to approve the interim financing of the acquisition.

(d) Furthermore, REA will not approve interim financing if, in REA's judgment, the proposed acquisition will not qualify for REA financing or the proposed interim financing presents unacceptable loan security risks to REA.

(e) Because REA approval of interim financing is not a commitment to make a loan, REA will not approve interim financing unless the borrower is prepared to assume responsibility for financing all obligations incurred.

(f) If the borrower plans to proceed with the closing after receiving REA approval of interim financing, it must

first receive preliminary approval from REA. See § 1750.40.

(g) See 7 CFR Part 1749 for regulations on interim financing for construction.

§ 1750.26 Acquisition of affiliates.

A borrower shall not use REA loan funds to acquire any stock or telephone plant in service or under construction of an affiliate.

§ 1750.27 Release of loan funds, requisitions, advances.

(a) REA will not approve the advance of loan funds until the borrower has fulfilled all loan contract provisions to the extent deemed necessary by REA.

(b) The first advance of loan funds pursuant to the loan contract normally shall provide funds needed for the acquisition. Unless the borrower has received approval of interim financing, it must submit the requisition in time for the advance to be made by the closing date.

(c) After the borrower has closed the acquisition, it shall furnish REA all documents necessary to demonstrate to REA's satisfaction that the transaction has been closed.

(d) Advances for improvements or expansion of the acquired facilities will not be approved until REA has determined that the transaction has been closed and the borrower has obtained satisfactory title to the acquired facilities, as set forth in REA Bulletin 380–1, Right-of-Way and Title Procedures, Telephone.

(e) See 7 CFR Part 1751 for additional requirements for releases of loan funds and 7 CFR Part 1754 for additional requirements for requisitions and advances.

Subpart D—Acquisitions or Mergers Not Involving Additional Loan Funds

§ 1750.30 Submission of data.

When a borrower is not requesting loan funds for an acquisition or merger, the borrower shall first notify REA and submit for review by REA those of the documents and information listed in (a) through (l) of this section required by REA.

(a) For any nonborrowers involved, their most recent balance sheets, operating statements, detail of plant accounts, reports to the state commission, and audits, if available.

(b) Completed REA Form 507, "Report on Telephone Acquisition."

(c) A map (such as a road map) showing county lines, the boundaries of the proposed acquisition and the borrower's existing service territory, and the names of other telephone companies serving adjoining areas.

(d) Plans for incorporating the acquired facilities into the borrower's existing system.

(e) The number of subscribers currently receiving service in the areas involved in the acquisition or merger and the number of new subscribers that will be served over the next 5 years as a result of the acquisition or merger.

(f) Copies of deeds of real estate to be acquired, with an explanation of the proposed use of the land.

(g) Copies of security documents of any other lenders involved and any contracts or other rights or obligations to be assumed by the survivor.

(h) A list of all counties in which the proposed system will have facilities.

(i) If Article II, section 4(b) of the standard mortgage has not been made applicable, plans for operating the unified system.

(j) In the case of a merger, the proposed articles of merger that are to be used.

(k) In the case of an acquisition, the proposed purchase price, plus two copies of any options, bills of sale, or deeds, and four copies of any acquisition agreements. All of these documents are subject to REA approval. If the acquisition agreement is approved by REA, two copies of it shall be returned to the borrower.

(l) Any other data deemed necessary by the Administrator for an evaluation of the acquisition or merger.

Subpart E—Requirements for All Acquisitions and Mergers

§ 1750.40 Preliminary approvals.

(a) In cases where the borrower's schedule for completion of the proposed action leaves insufficient time for REA to prepare and process the required documentation, including new mortgages and replacement notes, the borrower may request REA to give preliminary approval to the acquisition or merger. However, the borrower may not obtain additional loan funds until the documentation is completed to REA's satisfaction.

(b) Consideration of preliminary approvals generally will not be practicable in cases in which compensating benefits are required.

(c) REA will not give preliminary approval when the lien of the mortgage on after-acquired property may be affected.

(d) Before REA will grant preliminary approval, the borrower shall submit:

(1) Merger or acquisition documents required by state law;

(2) Acquisition agreements covering the transaction;

(3) Any required franchises, licenses, and permits;

(4) All required regulatory body approvals;

(5) All required corporate actions;

(6) Leases, contracts, and evidence of titles to be assigned to the purchaser; and

(7) The latest audited financial statements for any nonborrowers involved.

(e) If the information in paragraph (d) of this section is acceptable to REA, the borrower may proceed with the closing.

§1750.41 Location of facilities.

Telephone facilities to be acquired must be so located that they can be efficiently operated by the borrower and provide adequate security for the REA loan.

§1750.42 Accounting considerations.

(a) Proper accounting shall be applied to all acquisitions and mergers, as required by the regulatory commission having jurisdiction, or in the absence of such a commission, as required by REA.

(b) If REA determines that the plant accounts are not properly depreciated, the borrower should adjust its depreciation rates. Depending upon the characteristics of the case, commission jurisdiction and requirements, and similar factors, one of the following actions shall be taken:

(1) In states where commission approval of depreciation rates is required, a covenant shall be included in the loan contract that requires the borrower to:

(i) Have the consulting engineer make an original cost less depreciation inventory and appraisal of retained plant as part of the final inventory, and

(ii) Request commission approal of adjustments to its records on the basis of this inventory.

(2) In states where commision approval is not required, informal discussions between REA and the borrower may be undertaken to reach satisfactory voluntary adjustments. If this does not resolve the situation to REA's satisfaction, a covenant similar to that in paragraph (b)(1)(i) of this section shall be included in the loan contract and the borrower shall agree to submit evidence satisfactory to the Administrator that it has adjusted its records on the basis of the inventory.

§1750.43 Notes.

Substitute notes may be required in the case of an acquisition or merger, regardless of the source of funds.

§1750.44 Final approval and closing procedure.

(a) Legal documents relating to the acquisition or merger, including copies of required franchises, commission orders, permits licenses, leases, title evidence, corporate proceedings, and contracts to be assigned to the purchaser shall be forwarded to the Area Office prior to closing.

(b) The Administrator will not give final approval to any acquisition or merger until all REA requirements relating to the transaction are satisfied.

(c) Following the Administrator's final approval of the proposal, the Area Office shall inform the borrower in writing of the necessary legal and other actions required for the advance of loan funds to finance the acquisition, including the submission, in form and substance satisfactory to the Administrator, of

(1) All information and documents necessary to demonstrate that the transaction has been completed, and

(2) All loan contracts, notes, mortgages, and related documents and materials required by REA.

(d) Deeds reflecting the change in ownership, executed bills of sale, and opinions of counsel shall be forwarded to the Area Office following closing.

(e) REA will not advance loan funds to furnish or improve service in the acquired or merged areas until the Administrator has given final approval and the transaction has been closed. REA may, however, advance funds if it determines that loan security will not be jeopardized.

(f) At the discretion of REA, an REA field representative may be present at the closing to assist the borrower and protect the interests of REA. Under certain circumstances the closing may take place prior to REA granting final approval for the transaction and the execution of amended loan security documents.

§1750.45 Unadvanced loan funds.

(a) The unadvanced loan funds of a borrower that will not be a survivor of an acquisition or merger shall be advanced only to the survivor and only under the following circumstances.

(1) If the funds are to be used for purposes approved in prior loans, the funds shall be advanced after the affective date of the proposed action only when all loan contract prerequisites have been met and documents have been submitted in form and substance satisfactory to the Administrator.

(2) If the funds are to be used for new purposes, then in addition to the requirements in paragraph (a)(1) of this section. REA must also approve the change in purpose.

(b) No loan or other money in the construction fund shall be used to finance facilities outside areas to be served by projects approved by REA.

Subpart F—Toll Line Acquisitions

§1750.50 Use of loan funds.

When an acquisition of toll line facilities is to be financed with loan funds, the borrower shall submit to REA the acquisition agreement, the original cost less depreciation of the facilities, any concurrences with the connecting companies involved, and a detailed inventory of the facilities to be purchased. The borrower must submit to REA evidence, satisfactory to the Administrator, of the borrower's ownership of the toll line facilities before loan funds for improvement of those facilities will be advanced. Any such acquisition must be necessary and incidental, as determined by the Administrator, to furnishing or improving telephone service in rural areas.

§1750.51 With nonloan funds.

When an acquisition is limited to toll line facilities and loan funds are not involved, REA approval of the acquisition is not required. The borrower, however, shall submit to REA for its approval all concurrences with the connecting companies involved and any other proof of ownership of the toll facilities required by REA.

Dated August 25, 1988.

Jack Van Mark

Acting Administrator, Rural Electrification Administrator, Rural Electrification Administration.

[FR Doc 88-24186 Filed 10-18-88; 8:45 am]

BILLING CODE 3410-15-M

RAILROAD RETIREMENT BOARD

29 CFR Part 217

Application for Annuity or Lump Sum

AGENCY: Railroad Retirement Board.

ACTION: Proposed rule.

SUMMARY: The Railroad Retirement Board (Board) proposes to amend Part 217 to incorporate amendments made to the Railroad Retirement Act in 1981 and 1983. In addition, the Board proposes to incorporate into this part internal procedures with respect to applications for benefits under the Railroad Retirement Act and make technical changes to this part.

DATE: Comments must be received by November 18, 1988.

ADDRESS: Secretary to the Board, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611.

FOR FURTHER INFORMATION CONTACT: Marguerite P. Dabado, General Attorney, Railroad Retirement Board, 844 Rush Street, Chicago, Illinois 60611, (312) 751-4945 (FTS 386-4945).

SUPPLEMENTARY INFORMATION: Part 217 was added to the Railroad Retirement Board's regulations effective February 22, 1982, and was intended to update the regulations pursuant to the requirements imposed under the Railroad Retirement Act of 1974 (Act). Amendments to the Act in 1981 and 1983 require amendment of Part 217. In addition, certain internal procedures concerning applications for benefits which were not yet established when Part 217 was published are proposed to be added.

Public Law 97-35, the Omnibus Budget Reconciliation Act of 1981, provided for the first time for benefits for divorced spouses, surviving divorced spouses, and remarried widow(er)s which are like those provided under the Social Security Act. Sections 217.8 and 217.9(b)(2) are proposed to be amended to reflect these additional categories of applicants.

The Railroad Retirement Solvency Act of 1983 (Pub. L. 98-76) narrowed the category of student beneficiaries under the Railroad Retirement Act to those who are less than 19 years old and full-time elementary or secondary school students. Section 217.17(a) is proposed to be amended to delete the present second sentence, which permits a parent or person standing in place of a parent to sign an application for a student under 22 years of age.

Under authority conferred on the Board by section 7(d) of the Railroad Retirement Act (45 U.S.C. 231f(d)), an application for an employee disability annuity under that Act is also considered to be an application for a period of disability under the provisions of the Social Security Act. Proposed § 217.9(c)(4) reflects regulations of the Social Security Administration concerning when an application for a period of disability must be filed.

Section 217.17 currently establishes who may sign an application for benefits under the Railroad Retirement Act. The current regulation does not recognize "good cause" to allow for someone other than a competent claimant or the claimant's representative (in the case of an incompetent claimant) to sign an application, when necessary, to prevent loss of benefits. This lack of a provision for signature by another person for good cause has been a source of trouble

which has resulted in a number of unfavorable decisions over the years. The regulations of the Social Security Administration, which administers a benefit program similar to that administered by the Board, do recognize good cause to allow for someone other than the claimant to sign an application. Typically, illness of the claimant is cited as the reason for good cause, and good cause can only be invoked when a loss of benefits would otherwise result. Usually, it is the claimant's spouse or friend who is allowed to sign the application. A new paragraph (e) is proposed to be added to § 217.17 in order to permit someone other than the claimant to sign an application where good cause is established.

A new paragraph (c) is proposed to be added to § 217.20 so as to provide for the preparation of a written statement by Board personnel on behalf of a claimant who telephones a Board office but who cannot actually file an application before the end of the month. The proposed regulation would allow the date of the telephone contact to be used to protect the application filing date when it appears that a loss of benefits would otherwise result. The proposed amendment reflects an internal Board procedure which has been in effect since 1983.

Finally, certain technical amendments are proposed. A number of changes in terminology are proposed so that references to the various categories of applicants are uniform throughout Part 217. Section 217.1 is proposed to be amended to clarify that Part 217 deals only with applications.

The information collections imposed by the proposed amendments to Part 217 have been approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0031, and 3220–0042.

The Board has determined that this is not a major rule under Executive Order 12291; therefore, no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 217

Railroad employees, Railroad retirement.

For the reasons set out in the preamble, Title 20, Chapter II of the code of Federal regulations is proposed to be amended as follows:

PART 217—APPLICATION FOR ANNUITY OR LUMP SUM

1. The authority citation for Part 217 is revised to read as follows:

Authority: 45 U.S.C. 231d and 45 U.S.C. 231f.

2. Section 217.1 is revised to read as follows:

§ 217.1 Introduction.

This part prescribes how to apply for an annuity or lump-sum payment under this chapter. It contains the rules for the filing and cancellation of an application and the period of time the application is in effect. Eligibility requirements for an annuity and for a lump-sum payment are found respectively in Parts 216 and 234 of this chapter.

§ 217.8 [Amended]

3. Section 217.8 is amended by revising paragraph (d); by redesignating paragraph (j) as paragraph (s); by revising paragraphs (e) through (i) and redesignating them as paragraphs (f), (h), (i), (j) and (k), respectively; and by adding new paragraphs (e), (g), and (l) through (r) to read as follows: § 217.8 When one application satisfies the filing requirement for other benefits.

* * * * *

(d) A widow(er)'s annuity if the widow(er) was entitled to a spouse annuity in the month before the month the employee died.

(e) A widow(er)'s annuity if the widow(er) was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the month the employee died.

(f) A child's annuity if the spouse of the employee had the child "in care" and was entitled to a spouse annuity in the month before the month the employee died.

(g) A child's annuity or child's full-time student annuity if the child of the employee was included in the computation of the employee's annuity under the social security overall minimum provision of the Railroad Retirement Act in the month before the employee died.

(h) A widow(er)'s annuity based on age if the widow(er) was entitled to a widow(er)'s annuity based on disability in the month before the month in which he or she attains age 60.

(i) A widow(er)'s annuity based on age or disability if a widow(er), who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(j) A spouse annuity based on age if a spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an unreduced age annuity when he or she no longer has an eligible child "in care".

(k) A widow(er)'s annuity based upon having the employee's child "in care" if during the time the widow(er) is entitled to an annuity based on disability, he or she has "in care" a child of the deceased employee.

(l) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity reduced for age in the month before the month of the effective date of the final decree of divorce.

(m) A divorced spouse annuity if the divorced spouse was entitled to a spouse annuity not reduced for age in the month before the month of the effective date of the final decree of divorce and would also be entitled to a divorced spouse annuity not reduced for age.

(n) A surviving divorced spouse annuity if the surviving divorced spouse was entitled to a divorced spouse annuity in the month before the month the employee died.

(o) A remarried (widow(er)'s annuity if the remarried widow(er) was entitled to a widow(er)'s annuity in the month before the month of remarriage.

(p) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age or disability if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity because he or she had the employee's child "in care", is eligible for an age or disability annuity when he or she no longer has an eligible child "in care".

(q) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or the surviving divorced spouse was entitled to an annuity based on disability in the month before the month in which he or she attains age 65.

(r) A remarried widow(er)'s annuity or a surviving divorced spouse annuity based on age if the remarried widow(er) or surviving divorced spouse, who was receiving an annuity based on disability, is 60 years old or older when he or she recovers from the disability.

(s) A benefit under Title II of the Social Security Act unless the applicant restricts the application only to an annuity payable under the Railroad Retirement Act.

4. In § 217.9, paragraph (b)(2) is revised, and paragraph (c)(4) is added to read as follows:

§ 217.9 Effective period of application.

* * * * *

(b) * * *

(2) *Application for disability annuity.* If the Board determines that a claimant for a disability annuity is disabled under Part 200 of this chapter, beginning with a

date after the application is filed and before a final decision is made, the application is treated as though it were filed on the date the claimant became disabled. The claimant may be an employee, widow(er), surviving divorced spouse, remarried widow(er), or surviving child.

(c) * * *

(4) *Application for a period of disability.* In order to be entitled to a period of disability under Part 220 of this chapter, an employee must apply while he or she is disabled under Part 220 or not later than 12 months after the month in which the period of disability ends except that an employee who is unable to apply within the 12-month period after the period of disability ends because his or her physical condition limited his or her activities to the extent that he or she could not complete and sign an application or because he or she was mentally incompetent, may apply no later than 36 months after the period of disability ends.

(Approved by the Office of Management and Budget under control number 3220–0002)

5. In § 217.10, the introductory paragraph is removed and paragraph (c) is revised to read as follows:

§ 217.10 Application filed after death.

* * * * *

(c) A widow(er) or surviving divorced spouse may file an application for a spouse or divorced spouse annuity after the death of the employee if the widow(er) or surviving divorced spouse was eligible for a spouse or divorced spouse annuity in any month before the month the employee died. The spouse or divorced spouse annuity is payable from the beginning date set forth in Part 218 of this chapter.

6. Section 217.17 is amended by revising paragraph (a) and adding paragraph (e) to read as follows:

§ 217.17 Who may sign an application.

* * * * *

(a) A claimant who is 18 years old or older, competent (able to handle his or her own affairs), and physically able to sign the application, must sign in his or her own handwriting, except as provided in paragraph (e) of this section. A parent or a person standing in place of a parent must sign an application for a child who is not yet 18 years old, except as shown in paragraph (d) of this section.

* * * * *

(e) If it is necessary to protect a claimant from losing benefits and there is good cause for the claimant not personally signing the application, the Board may accept an application signed by someone other than a person described in paragraphs (a), (b), (c), and (d) of this section. A person who signs an application for someone else will be required to provide evidence of his or her authority to sign the application for the person claiming benefits under the following rules:

(1) If the person who signs is a court-appointed representative, he or she must submit a certificate issued by the court showing authority to act for the claimant.

(2) If the person who signs is not a court-appointed representative, he or she must submit a statement describing his or her relationship to the claimant. The statement must also describe the extent to which the person is responsible for the care of the claimant.

(3) If the person who signs is the manager or principal officer of an institution which is responsible for the care of the claimant, he or she must submit a statement indicating the person's position of responsibility at the institution.

(4) The Board may, at any time, in its sole discretion require additional evidence to establish the authority of a person to sign an application for someone else.

(Approved by the Office of Management and Budget under control numbers 3220–0002, 3220–0030, 3220–0031 and 3220–0042)

7. Section 217.20 is amended by adding paragraph (c) to read as follows:

§ 217.20 When a written statement is used to establish the filing date.

* * * * *

(c) *Telephone contact with the Board.* If an individual telephones a Board office and advises a Board employee that he or she intends to file an application but cannot do so before the end of the month, the Board employee will prepare and sign a written statement which may be used to establish the filing date of an application if all of the following requirements are met:

(1) The inquirer expresses a clear and positive intent to claim benefits for himself or herself or for some other person;

(2) The prescribed application cannot be filed by the end of the current month;

(3) The inquirer is either the potential claimant or the person who will file an application as representative payee therefor;

(4) The inquiry is received by an office of the Board no more than 3 months before eligibility exists;

(5) It appears that a loss of benefits might otherwise result;

(6) The telephone inquirer files an application with the Board of one of the forms described in Part 200 of this chapter within 90 days after the date a notice is sent advising the person of the need to file an application; and

(7) The claimant is alive when the application is filed, except as provided in § 217.10 of this part.

Dated: October 12, 1988.

By Authority of the Board.

Beatrice Ezerski,

Secretary to the Board.

[FR Doc. 88–24174 Filed 10–18–88; 8:45 am]

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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Part 968

[Docket No. R–88–1422; FR–2545]

Comprehensive Improvement Assistance Program

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would make changes in "special purpose modernization" under the Comprehensive Improvement Assistance Program (CIAP) to implement statutory amendments contained in section 120 of the Housing and Community Development Act of 1987 (1987 Act), along with related funding provisions reflecting the statutory policy, as follows:

- Revision of the definition of "special purpose modernization" to expand the types of physical improvements which may be funded under a special purpose modernization program, subject to a HUD determination that the improvements are necessary and sufficient to extend substantially the useful life of the project;
- Revision of the procedural instructions regarding preliminary applications and joint reviews, to provide for a comprehensive or specialized needs assessment of projects for which the PHA requests special purpose modernization funds;
- Authority for HUD to establish funding set-asides for special purpose modernization, as necessary to assure that special purpose needs are appropriately addressed;
- Where a project has not been comprehensively modernized, a one-time limitation on special purpose

funding for certain types of physical improvements, so that if any additional needs of these types arise for the same project, they would then have to be addressed as a part of a comprehensive program; and

- Placing certain conditions on special purpose funding for physical improvements to reduce the number of vacant, substandard units.

DATES: Comment due date: November 18, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ilene Blinick, Project Management Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington DC 20410, telephone (202) 755-6640. A telecommunications device for deaf persons (TDD) is available at (202) 472-6725. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION:

Under the Comprehensive Improvement Assistance Program (CIAP)—which is governed by Section 14 of the United States Housing Act of 1937 (1937 Act) and the HUD regulations at 24 CFR Part 968—HUD provides grants to public housing agencies (PHAs) to pay for physical improvements to existing public housing projects and to upgrade the management and operation of projects to the extent necessary to maintain the physical improvements.

Under the existing regulation, CIAP funding may be provided to PHAs under five categories: (1) Comprehensive modernization; (2) emergency modernization; (3) special purpose modernization; (4) homeownership modernization; and (5) lead based paint modernization. Comprehensive modernization is the main category, reflecting the primary objective of the CIAP: complete rehabilitation of viable public housing projects, to address all physical improvement needs and make any management improvements needed to sustain the physical improvements.

The proposed amendments to the existing CIAP regulation are limited to provisions on special purpose modernization and do not modify the essential structure or objectives of the program. These changes implement statutory amendments to Section 14 of the 1937 Act, included in Section 120 of the Housing and Community Development Act of 1987 (1987 Act).

Although Part 968 currently applies to Indian housing, the Department is planning to consolidate all public housing regulations for Indian housing in Part 905 (see proposed rule, 53 FR 24554, published June 29, 1988). Persons interested in Indian housing should nevertheless comment on this proposed rule, because the Department intends to incorporate its provisions in Part 905 without having to publish a separate proposed rule to amend Part 905.

In general, the potential availability of funds for special purpose modernization would be expanded and PHAs would be afforded more flexibility in addressing special purpose needs, as a result of a broader definition of the types of work eligible for special purpose funding and an authorization for HUD to set aside a portion of available CIAP funds for special purpose use. In addition, the proposed rule includes a number of new conditions for special purpose funding, designed to implement the statutory policy by striking a proper balance between the primary objective of comprehensive modernization and the considerations which may justify special purpose improvements in particular situations.

All other program requirements under the existing CIAP regulation would continue to apply to special purpose modernization, unless otherwise stated in the proposed amendments. An example is the requirement for a PHA to certify that its proposed modernization cannot be funded from current operating funds.

All types of special purpose modernization would continue to be limited to physical improvements, as defined in existing § 968.4(a). Under the amended regulation, management improvements would continue to be eligible for inclusion in comprehensive modernization programs only.

While the proposed rule would make some changes in the existing regulatory provisions on PHA planning, there would be no essential change in the five-year comprehensive planning requirements. The comprehensive plan would have to be modified as necessary to address any special purpose needs not already reflected in the plan.

The rationale for special purpose modernization is that, in some situations, there may be needs for limited physical improvements which—though not so urgent as those eligible for emergency or lead based paint modernization—merit action apart from comprehensive modernization.

The project might already be in generally sound condition (because it had never deteriorated enough to need modernization or because it had previously been modernized) so that the kind of major rehabilitation usually involved in comprehensive modernization is not needed. Nevertheless, the need may arise for some limited physical improvements, such as for replacement of heating equipment or for additional accessibility for elderly and handicapped residents.

In other cases, where major rehabilitation is still needed, there may be an interim need to make limited physical improvements before a complete program of comprehensive modernization can be developed, funded and carried out. For example, under the expanded definition in the proposed rule, special purpose modernization might be justified to pay for major roof repairs needed to preserve a potentially viable building pending subsequent funding for a comprehensive modernization program to complete total rehabilitation of the property.

Under § 968.3 of the existing rule, the definition of special purpose modernization is restricted to physical improvements for cost-effective energy conservation. The 1987 statutory amendment expanded the scope of special purpose modernization by specifying four additional types of eligible work items. The new statutory language, inserted under Section 14(i)(1)(D) of the 1937 Act, reads as follows:

> (ii) physical improvement needs eligible under this subparagraph shall include replacing or repairing major equipment systems or structural elements, upgrading security, increasing accessibility for elderly families and handicapped families (as such terms are defined in section 3(b)(3)), reducing the number of vacant substandard units, and increasing the energy efficiency of the units, except that the Secretary may make financial assistance available under this clause only if the Secretary determines that the physical improvements are necessary and sufficient to extend substantially the useful life of the project.

The proposed rule would therefore revise the definition of "special purpose modernization" under § 968.3 to include all five of the types of physical improvements now enumerated by the statute, citing a few examples. A special purpose modernization program could consist exclusively of physical improvements of any one type or any combination of two or more types listed in the proposed definition, subject to the

further requirements of the Public Housing Modernization Standards Handbook, 7485.2, REV–1.

The revised definition would also incorporate the general statutory restriction, as prescribed by the exception clause of the above-quoted 1987 amendment, allowing CIAP funding for special purpose modernization only if HUD determines that "the physical improvements are necessary and sufficient to extend substantially the useful life of the project." It is not enough that the proposed work items meet the basic eligibility tests under the revised definition and the Modernization Standards Handbook. They must also be both *necessary* to extend *substantially* the useful life of the project, and *sufficient* to do so.

This "necessary and sufficient" test is a matter of common sense judgment, looking at the needs of the particular project. A particular physical improvement may clearly be necessary, but still insufficient, of itself, to effect a substantial extension of the project's useful life. For example, repair of a building foundation, though necessary, might be insufficient without related drainage work. On the other hand, related landscaping work, though eligible for inclusion in a comprehensive modernization program, might not be necessary by the special purpose standard. The "necessary and sufficient" test is thus both a maximum and minimum standard; the work must be no more and no less than what is required for substantial extension of the project's useful life.

The proposed rule would revise the existing procedures for preliminary applications and joint reviews under § 968.5. The main change here would be in § 968.5(e)(2), regarding the needs assessment to be completed by the PHA in preparation for the joint review. As a general rule, a comprehensive assessment of all physical and management needs would be required for any project for which the PHA is currently requesting comprehensive or special purpose funding. However, where a special purpose request for a project is limited to physical improvements relating to accessibility for elderly and handicapped families and energy efficiency, a specialized needs assessment would suffice unless HUD determined that there was evidence indicating that the project had major problems justifying a comprehensive assessment. (Emergency, homeownership and lead-based paint modernization would continue to be subject to a specialized assessment of project needs.)

For consistency with this revision of § 968.4(c)(1), the related provision on the PHA's five-year plan (§ 968(c)(1)) would also be revised. If the PHA wished to request special purpose funds not previously included in its five-year plan, it would have to modify the plan before HUD would consider funding those needs.

The proposed rule would add, under § 968.5(h), a new paragraph (4), authorizing HUD to set aside for special purpose modernization a portion of the total CIAP funds available for any Federal Fiscal Year (FFY), as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed. Special purpose modernization applications would be ranked as a separate group and would compete only with each other for the set-aside funds—not with applications for comprehensive modernization or other modernization categories. In view of this provision, references to "special purpose" would be deleted from existing paragraphs (2) and (3) of § 968.5(h).

The actual amount of each year's special purpose set-aside would be stated in the Department's annual CIAP processing notices to PHAs and HUD Regional and Field Offices. For FFY 1989, the Department's intention (subject to final rulemaking) is to set aside for special purpose funding 20 percent of each HUD Regional Office's total CIAP funds. If any Regional Office finds that less than the total amount of its special purpose set-aside is needed to fund special purpose improvements, then the remaining funds could be used for other needs.

In addition, the proposed rule would add a new § 968.10, entitled "Additional provisions for special purpose modernization". This new section would set two conditions, each relating to funding for certain types of special modernization.

These conditions are designed to reinforce the overall CIAP policy established by section 14 of the 1937 Act, considering the intent of the 1987 amendment for special purpose modernization within the broader policy context of the program as a whole. This policy still emphasizes the primary importance of a comprehensive approach to modernization, while recognizing a variety of situations where special purpose modernization may be justified. The Department believes that the conditions stated in the proposed new § 968.10, along with the other provisions of this proposed rule, strike a proper balance between these two policy goals.

Proposed § 968.10(a) would limit the number of times a PHA could obtain special purpose funding for a project that has not yet been comprehensively modernized, with respect to three of the five types of physical improvements listed in the revised definition. For such a project, special purpose funds could be obtained only once for each of the types of physical improvements relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units. If any additional physical improvements to the same project for these three purposes become needed at a later time, they would have to be funded as a part of a comprehensive modernization program, addressing the total physical and management needs of the project. Such comprehensive modernization may not necessarily involve extensive rehabilitation. However, it will be the case that *all* the needs of the project will be met, so that the total project will meet the modernization standards at one point in time.

The Department believes that this limitation is necessary to assure that all projects are brought up to the modernization standards and that no project is permitted to continue in generally poor repair overall, occasionally receiving some special purpose or emergency modernization, but never reaching modernization standards.

This limitation would not, however, apply to the other two types of eligible special purpose work—those related to accessibility and energy efficiency. Special purpose funding for these two purposes could be provided as many times as might be justified.

This provision would have no applicability at all to a project which had already been comprehensively modernized. For such a project, there would be no limitation on the number of times special purpose funding could be provided for any of the five types of eligible physical improvements, if justified. For example, if the prohibition against premature replacement resulted in a need to replace old heating equipment after completion of comprehensive modernization, that need could then be addressed by a special purpose modernization program, as could any other eligible need that might subsequently arise.

The rationale for the proposed § 986.10(a) is that the three types of work items to which its restrictions would be applicable merit special safeguards against poor PHA planning where the project has not been comprehensively modernized. The fact

that this limitation would apply only in that situation must not be taken as a sanction for piecemeal modernization in other situations. The 1987 legislation was not intended to repeal the statutory requirements for sound PHA planning and a comprehensive approach to its overall modernization needs.

Proposed § 968.10(b) would subject one of the types of special purpose work items—physical improvements to reduce the number of vacant, substandard units—to restrictions related to unit turnover. Note that routine turnover repairs which do not satisfy the definition of "physical improvements" would continue to be ineligible for funding under special purpose modernization or any other CIAP category.

The proposed rule would further restrict special purpose funding for vacant unit repairs which might otherwise be eligible for CIAP funding. Such repairs would be limited to work necessary to meet local code requriements and return the vacant units to a habitable condition, comparable to that of occupied units in the same project.

In any even, special purpose funding could be provided for this purpose only if the PHA's average number of vacancy days per turnover of untis on the market did not exceed 30 calendar days. This would ensure that special purpose funding for reduction of vacancies would be limited to PHAs with capable management. A longer average turnover time indicates that there may be ineffective management in regard to turnover. The PHA might need to address its management problems before funds could be spent effectively on physical improvements. In such cases, the most effective treatment might be comprehensive modernization, with management improvement funding in the first year.

Findings and Certifications

A Finding of No Significant Impact with respect to the environment was made in accordance with HUD regulations at CFR Part 50 that implement section 102(2)(C) of the National Environmental Policy Act of 1969, 42 U.S.C. 4332. The Finding of No Significant Impact is available for public inspection and copying during regular business hours in the Office of the Rules Docket Clerk, Room 10276, 451 Seventh Street, SW., Washington, DC 20410.

This rule would not constitute a "major rule", as that term is defined in section 1(b) of Executive Order 12291 issued by the President on February 17, 1981. Analysis of the proposed rule indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in cost or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innnovation, or on the ability of United States-based enterprises to compete with foreignbased enterprises in domestic or export markets.

Under the Regulatory Flexibility Act (5 U.S.C. 601), the undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would expand the definition of special purpose modernization, to permit CIAP funding for the four additional types of physical improvements now authorized by statute, and would prescribe certain conditions and procedures for such funding. It would thus tend to give PHAs more flexibility and tend to make their modernization effects less burdensome.

The rule would apply to all PHAs, large and small, which apply for special purpose modernization funds. It would not have a significant economic impact on any HUD assistance recipients, including small PHAs or any other small entities.

This rule was not listed in the Department's semiannual agenda of regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act at 49 FR 15960.

An abbreviated 30-day public comment period is provided, because the Department is making every effort to achieve publication of a final rule for implementation in connection with the Federal Fiscal Year 1989 funding cycle. Early publication of a final rule would allow PHAs maximum opportunity, in their FY 1989 planning, for a more flexible approach to special purposes needs.

List of Subjects in 24 CFR Part 968

Public housing.

Accordingly, 24 CFR Part 968 would be amended as follows:

PART 968—COMPREHENSIVE IMPROVEMENT ASSISTANCE PROGRAM

1. The authority citation for Part 968 would continue to read as follows:

Authority: Secs. 6 and 14, United States housing Act of 1937 (42 U.S.C. 1437d, 1437l); sec. 7(d) Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. In § 968.3, the definition of "Special purpose modernization" would be revised to read as follows:

§ 968.3 Definitions.

* * * * *

"Special purpose modernization" means a modernization program for a project that is limited to any one or more of the following types of physical improvements otherwise eligible for CIAP funding under this part, subject to a HUD determination that the physical improvements are necessary and sufficient to extend substantially the useful life of the project:

(1) Physical improvements to replace or repair major equipment systems (such as elevators and heating, cooling, electrical, and water and sewer systems) or structural elements (such as roofs, walls and foundations);

(2) Physical improvements to upgrade security, such as installation of additional lighting, security screens on windows, better locks, or design changes to enhance security (excluding non-physical improvements, such as security staffing and services);

(3) Physical improvements to increase accessibility for elderly and handicapped families, according to the applicable standards of 24 CFR Part 8;

(4) Physical improvements to reduce the number of units which are vacant and substandard, including any improvements necessary to meet local code requirements and return the units to occupancy; and

(5) Cost-effective physical improvements to increase the energy efficiency of the project.

* * * * *

3. In § 968.5, the reference in paragraphs (h)(2) and (h)(3) to "special purpose" and the comma immediately preceding those words would be removed, paragraphs (c)(1) and (e)(2) would be revised, and a new paragraph (h)(4) would be added, as follows:

§ 968.5 Procedures for obtaining approval of a modernization program.

* * * * *

(c) * * *

(1) A five-year plan, which is the PHA's initial comprehensive assessement of the modernization funds to be requested over a five-year period to meet the total physical and management improvement needs of its projects for all categories of modernization authorized by this part. The plan shall include a gross estimate of the modernization funds to be requested for each project.

* * * * *

(e) * * *

(2) Completing an assessment of the needs of each project for which the PHA is requesting funds in the current FFY. The PHA will complete a detailed, comprehensive assessment, in a form prescribed by HUD, of the total physical and management needs of each project for which the PHA is requesting Comprehensive or special purpose modernization; except that if the request for a particular project is limited to physical improvements to increase accessibility for elderly and handicapped familes and to increase energy efficiency, a specialized assessment will be completed unless HUD determines that there is evidence indicating that the project has major problems which justify a comprehensive assessment. An assessment of specialized physical improvement needs will be completed for each project for which th PHA is requesting emergency, homeownership or lead-based paint modernization.

* * * * *

(h) * * *

(4) HUD may set aside for special purpose modernization a portion of the total modernization funds available for nay FFY, as determined by HUD to be necessary to assure that special purpose needs are appropriately addressed.

* * * * *

§ 968.9 Amended

4. In § 968.9, paragraph (h)(4) would be amended by revising the reference to "§ 968.19" to read "§ 968.20".

§ 968.10 through 968.19 [Redesignated as §§ 968.11 through 968.20]

5. Sections 968.10 through 968.19 would be redesignated as §§ 968.11 through 968.20, respectively, and a new §968.10 would be added, to read as follows:

§ 968.10 Additional limitation of special purpose modernization.

(a) For each of the three types of special purpose modernization relating to major equipment systems or structural elements, security, and reduction of vacant, substandard units, a PHA may obtain special purpose modernization funding only once for a project that has not been comprehensively modernized. Subsequent funding for the same project for any additional physical improvements of these types may be provided only as a part of a program which addresses all of the physical and management improvement needs of the project under the comprehensive modernization.

(b) Special purpose modernization to reduce the number of vacant, substandard units will be limited to physical improvements which are necessary to meet local code requirements and return such units to a condition that is comparable to the condition of occupied units in the same project. To be eligible for funding under this type of special purpose modernization, the PHA's average number of vacancy days per turnover of units on the market may not exceed 30 calendar days.

§ 968.4 [Amended]

6. In § 968.4(a), the reference to § 968.18 would be revised to refer to § 968.19.

§ 986.8 [Amended]

7. In § 968.8(b)(3), reference to § 968.10 would be revised to refer to § 968.11.

§ 968.14 [Amended]

8. In § 968.14(b), as redesignated in this rule, the reference to § 968.14 would be revised to refer to § 968.15.

Dated: September 15, 1988.

James E. Baugh,

General Deputy Assistant Secretary for Public and Indian Housing.

[FR Doc. 88-24004 Filed 10-18-88; 8:45 am]

BILLING CODE 4210-33-M

DEPARTMENT OF THE TREASURY

Bureau of Alcohol, Tobacco and Firearms

27 CFR Parts 4 and 12

[Notice No. 674, Ref. Notice No. 662]

Nongeneric Designations of Grape Wine Having Geographic Significance

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends the comment period for Notice No. 662, a previous extension of Notice No. 657, an advance notice of proposed rulemaking, published in the **Federal Register** on April 12, 1988 (53 FR 12024). ATF has since received a request from the Wine Institute in San Francisco for an extension of the comment period to forty-five days. The governments of Italy and the Republic of West Germany have asked for extensions, also, in order to provide sufficient time for all interested parties to respond to the complex issues addressed in the advanced notice. This comment period, therefore, is granted for an additional 45 days, until November 25, 1988.

DATE: Written comments must be received on or before November 25, 1988.

ADDRESS: Please submit all comments to the Chief, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044-0385 (Attn: Notice No. 674).

FOR FURTHER INFORMATION CONTACT: John Colozzi, Specialist, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms, Ariel Rios Federal Building, 1200 Pennslyvania Avenue, NW., Washington, DC 20226 (202-535-6245).

SUPPLEMENTARY INFORMATION:

Background

On April 12, 1988, The Bureau of Alcohol, Tobacco and Firearms published a Notice of Proposed Rulemaking, Number 657, Nongeneric Designations of Grape Wine Having Geographic Significance. It details a proposed regulatory change to Title 27, Code of Federal Regulations, Part 4, "Labeling and Advertising of Wine." Names of geographic significance may be used only to designate wine of the origin indicated by that name.

The purpose of this change is to expand the list of foreign names of geographic significance for the purpose of labeling and advertising wine. Numerous foreign countries, including members of the European Economic Community, have petitioned ATF to recognize names of geographic significance used in connection with foreign wines. ATF plans to list these names in a new Part 12, entitled "Foreign Names of Geographic Significance."

Furthermore, § 4.24 provides that certain nongeneric names may be used as "distinctive" designations of wines, if approved by ATF, and certain of these names have been found by the Director to be "distinctive" designations of specific grape wines when they are known to the consumer and to the trade as the designation of a specific wine of a particular place, or region, distinguishable from all other wines. Examples of this distinctive type are "Liebfraumilch" and "Lacryma Christi."

Originally, the date for closing of comments was July 11, 1988. Written requests from U.S. businesses, organizations, and foreign governments resulted in an extension to October 11, 1988. After further consultation with these various groups, another extension of forty-five days is granted until November 25, 1988.

Respondents should take note of a typographical error that appears in the

April 12, 1988, Notice of proposed rulemaking. In the introductory text of § 12.21 in *Subpart C—Foreign Names of Geographic Significance*, on page 12028, the phrase "27 CFR 4.24(c)(2)" should have read "27 CFR 4.24(c)(1)".

Drafting Information

The principal author of this document was John Colozzi, Alcohol Import-Export Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects

27 CFR Part 4

Advertising, Consumer protection, Imports, Labeling, Packaging and Containers, Wine.

27 CFR Part 12

Administrative practice and procedures, Imports, Labeling, Wine.

Signed: October 12, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88–23941 Filed 10–13–88; 3:25 pm]

BILLING CODE 4810-31-M

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27 CFR Part 19

[Notice No. 673; Ref. Notice No. 669]

Labels for Export Spirits

AGENCY: Bureau of Alcohol, Tobacco and Firearms (ATF), Treasury.

ACTION: Extension of comment period.

SUMMARY: This notice extends for thirty days the comment period for Notice No. 669, a notice of proposed rulemaking published in the **Federal Register** on August 24, 1988 (53 FR 32255). Notice 669 invites comments from the public and industry as to whether 27 CFR 19.395 should be amended to give the Director ATF the authority to waive all of the labeling requirements for bottled distilled spirits which are to be exported. This proposal would enable distilled spirits products intended for exportation to be bottled in this country at less than the minimum bottling proofs established by regulation (27 CFR 5.22) without the necessity that the labels for such products bear the word "diluted." ATF has received a request from the Distilled Spirits Council of the United States, Inc., an organization which represents manufacturers and importers of distilled spirits, for an extension of the comment period in order that more time will be available for the organization and its members to consider the proposal.

DATE: Written comments must be received on or before November 23, 1988.

ADDRESS: Send written comments to: Chief, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, P.O. Box 385, Washington, DC 20044–0385 *Attn:* Notice No. 669.

FOR FURTHER INFORMATION CONTACT: Robert Petrangelo or Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms, Washington, DC 20226 (202–566–7531).

SUPPLEMENTARY INFORMATION:

Drafting Information

The authors of this document are Robert Petrangelo and Colleen Then, Distilled Spirits and Tobacco Branch, Bureau of Alcohol, Tobacco and Firearms.

List of Subjects in 27 CFR Part 19

Administrative practice and procedure, Alcohol and alcoholic beverages, Authority delegations, Claims, Chemicals, Customs duties and inspection, Electronic funds transfers, Excise taxes, Exports, Gasohol, Imports, Labeling, Liquors, Packaging and containers, Puerto Rico, Reporting and recordkeeping requirements, Research, Security measures, Spices and flavorings, Surety bonds, Transportation, Virgin Islands, Warehouses, Wine.

Authority and Issuance

This notice is issued under the authority in 27 U.S.C. 5201 and 27 U.S.C. 5301.

Signed: October 12, 1988.

Stephen E. Higgins,

Director.

[FR Doc. 88–23940 Filed 10–18–88; 8:45 am]

BILLING CODE 4810-31-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL–3451–5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Cooper Road Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Cooper Road Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Cooper Road site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further fund financed remedial actions are appropriate at this site and actions taken to date are protective of the public health, welfare, and the environment.

DATE: Comments concerning this site may be submitted on or before November 18, 1988.

ADDRESSES: Comments may be mailed to: Stephen D. Luftig, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

Comprehensive information on this site is available through the EPA public docket, which is located at EPA's Region II Office in New York City, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the Regional public docket should be directed to the EPA Region II docket office. The Address for the Regional docket office is: Mr. Donald Lynch, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 711, New York, NY 10278, (212) 264–1870.

FOR FURTHER INFORMATION CONTACT: Background information from the Regional public docket is also available for viewing at the Cooper Road site information repository located with: Mr. John Connolly, Zoning Officer, Township of Voorhees Health Department, 620 Berlin Road, Voorhees, New Jersey 08043.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Cooper Road site, in Voorhees Township, New Jersey from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the

NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (Fund). Pursuant to section 105(e) of CERCLA, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that the remedy (or no remedy if appropriate) is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states:

> Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up to Date" on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for information purposes and to assist Agency management. As is mentioned in section II of this notice, section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA Region II will accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level, similar to those procedures for local comment outlined in EPA's March 27, 1984 "Interim Procedures for Deleting Sites from the NPL." Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New Jersey has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local and community newspapers and has been distributed to appropriate Federal, State and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register.** The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Cooper Road site in Voorhees Township, New Jersey from the NPL.

The Cooper Road site is located on a small tract of land, less than 100 square feet, near the intersection of Treebark Terrace and Courtland Drive in Voorhees Township, Camden County, New Jersey.

In mid-1982, the New Jersey Department of Environmental Protection (NJDEP) was informed by the State Police of the presence of several dozen one- and two-ounce vials containing liquid chemicals of an unknown nature. Subsequent analysis of the contents of the vials indicated the presence of several hazardous substances including benzene, ethylbenzene, xylene, methane, naphthalene and hexachlorocyclopentadiene. Based on the potential for ground water contamination the site was proposed for inclusion on the NPL in August 1983 and appeared on the final NPL in November 1984.

In May 1984, pursuant to a Directive Letter from the NJDEP, the site owner conducted a removal of the vials and six inches of the underlying soil. EPA was apprised of the surface cleanup. In October 1984, EPA determined that an investigation of the subsurface conditions at the site was necessary in order to determine if a release of contamination into the underlying soils and/or ground water had occurred in the vicinity of the vials.

Due to the moderately low ranking of the site on the NPL, and because of the previous surface cleanup activities, funds for a remedial investigation did not become available until 1986.

In April 1987, EPA completed a modified remedial investigation which included soil, ground water and potable well sampling. Results of ground water and soil analysis found background levels of metals and other elements normally associated with the aquifer and soil conditions in southern New Jersey. Potable well samples did not detect any contaminants.

The results of field investigations revealed that no levels of contaminants attributable to the contamination which previously existed at Cooper Road remained in the environment. EPA and NJDEP evaluations of the cleanup performed at the site indicated that there was no longer a source of contamination nor has there been any

migration of contaminants into the air, ground water, surface water or soil. Therefore, the Record of Decision signed on September 30, 1987 called for no further action at the Cooper Road site.

The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health consultation for the site in August 1987. ATSDR concluded that the ground water does not pose a threat to public health.

The EPA community relations activities at the site included a public meeting in September 1987 to present the Agency's preferred remedial alternatives. Public comments were received and addressed.

EPA, with concurrence of the State of New Jersey, has determined that there is no longer a release that poses a significant threat to public health or the environment and, therefore, the taking of further remedial measures is not appropriate.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88-22186 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

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40 CFR Part 300

[FRL-3455-5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List; Krysowaty Farm Site

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete Krysowaty Farm Site from the National Priorities List; request for comments.

SUMMARY: The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Krysowaty Farm site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes Appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey have determined that no further fund financed remedial actions are appropriate at this site and actions taken to date are protective of the public health, welfare, and the environment.

DATE: Comments concerning this site may be submitted on or before November 18, 1988.

ADDRESSES: Comments may be mailed to: Stephen D. Luftig, Director, Emergency and Remedial Response Division, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, New York, NY 10278.

Comprehensive information on this site is available through the EPA public docket, which is located at EPA's Region II Office in New York City, and is available for viewing by appointment only from 9:00 a.m. to 4:00 p.m., Monday through Friday, excluding holidays. Requests for appointments or copies of the background information from the Regional public docket should be directed to the EPA Region II docket office.

The Address for the Regional docket office is: Mr. Ronald Borsellino, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, Room 711, New York, NY 10278, (212) 264-1870.

FOR FURTHER INFORMATION CONTACT: Background information from the Regional public docket is also available for viewing at the Krysowaty site information repository located with: Mr. Glen Belnay, Health Officer, Hillsborough Township Health Department, 330 Amwell Road, Neshanic, New Jersey 08853.

SUPPLEMENTARY INFORMATION:

Table of Contents

I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

The Environmental Protection Agency (EPA), Region II Office, announces its intent to delete the Krysowaty Farm site, in Voorhees Township, New Jersey from the National Priorities List (NPL), which constitutes Appendix B of the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), and requests comments on this deletion. The EPA identifies sites that appear to present a significant risk to public health, welfare or the environment, and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substance Response Trust Fund (Fund). Pursuant to section 105(e) of CERCLA, any site deleted from the NPL remains eligible for Fund-financed remedial actions if conditions at the site warrant such action.

The EPA will accept comments on this site for thirty days after publication of this notice in the **Federal Register.**

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.66(c)(7), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA will consider whether any of the following criteria have been met:

(i) EPA, in consultation with the State, has determined that responsible or other parties have implemented all appropriate response actions required; or

(ii) All appropriate Fund-financed responses under CERCLA have been implemented and EPA, in consultation with the State, has determined that no further cleanup by responsible parties is appropriate; or

(iii) Based on a remedial investigation, EPA, in consultation with the State, has determined that the release poses no significant threat to public health or the environment and, therefore, taking of remedial measures is not appropriate.

Before deciding to delete a site, EPA must first determine that the remedy (or no remedy if appropriate) is protective of public health, welfare, and the environment, considering environmental requirements which are applicable or relevant and appropriate. In addition, section 121(f)(1)(c) of CERCLA requires State concurrence for deleting a site from the NPL.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states:

> Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a 'Site Cleaned Up To Date' on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system.

III. Deletion Procedures

In the NPL rulemaking published in the **Federal Register** on October 15, 1984 (49 FR 40320), the Agency solicited and received comments on whether the notice and comment procedures followed for adding sites to the NPL should also be used before sites are deleted. Comments were also received in response to the amendments to the NCP that were proposed in the **Federal Register** on February 12, 1985 (50 FR 5862). Deletion of sites from the NPL does not itself create, alter, or revoke any individual's rights or obligations. The NPL is designed primarily for informational purposes and to assist

Agency management. As is mentioned in section II of this notice, section 105(e) of CERCLA makes clear that deletion of a site from the NPL does not preclude eligibility for future Fund-financed response actions.

EPA Region II will accept and evaluate public comments. The Agency believes that deletion procedures should focus on notice and comment at the local level, similar to those procedures for local comment outlined in EPA's March 27, 1984 "Interim Procedures for Deleting Sites from the NPL." Comments from the local community are likely to be the most pertinent to deletion decisions. The following procedures were used for the intended deletion of this site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. The State of New Jersey has concurred with the deletion decision.

3. Concurrent with this National Notice of Intent to Delete, a local notice has been published in local and community newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This local notice announces a thirty (30) day public comment period on the deletion package.

4. The Region has made all relevant documents available in the Regional Office and local site information repository.

The comments received during the notice and comment period will be evaluated before the final decision to delete. The Region will prepare a Responsiveness Summary, which will address the comments received during the public comment period.

A deletion will occur after the Assistant Administrator for Solid Waste and Emergency Response places a notice in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by Region II.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rational for recommending deletion of the Krysowaty Farm site, Hillsborough Township, New Jersey from the NPL.

The Krysowaty Farm site is located on a 42-acre tract in Hillsborough Township, Somerset County, New Jersey, near the Village of Three Bridges. The site consisted of a waste disposal area approximately one acre in size.

An estimated 500 drums of paint and dye waste sludges, waste oils, and various other waste materials were allegedly dumped, crushed, and buried at the site from 1965 to 1970. Complaints from local residents of health problems and odors in their well water, coupled with an eyewitness account of the alleged waste disposal, brought the site to the attention of the local health department. The New Jersey Department of Environmental Protection (NJDEP) became aware of the site in October 1979. Since 1979, local, state, and federal officials have conducted site investigations and sampling. In 1982, the Township began to provide bottled water to nearby residents. The site was proposed for inclusion on the NPL on July 23, 1982 and appeared on the final NPL on December 30, 1982.

In 1984, the EPA completed a remedial investigation and feasibility study (RI/FS). The RI/FS studied the soil, sediment, surface water, a leachate seep, and ground water. Volatile organics, pesticides, base/neutral compounds and trace PCB contamination were found in the waste disposal area. On June 20, 1984, EPA signed a Record of Decision (ROD) selecting a remedy for the Krysowaty Farm site.

The ROD called for the following remedial activities at the site: Excavation and removal of the wastes disposal area; transport and disposal of waste to an approved hazardous waste disposal facility; provision of a permanent alternate water supply for potentially affected residences; monitoring of on-site wells, semi-annually, for a five-year period.

The EPA community relations activities at the site included a public meeting in May 1983 to present the work plan for performing the RI/FS, and a meeting in March 1984 to present findings of the RI/FS and the preferred alternative. Public comments were received and addressed. A major concern of the public and local officials was the need for an alternative water supply. In July 1984, EPA held another public meeting to discuss the selected remedial alternative, which included the alternate water supply. EPA conducted a public meeting in November 1985 to present an overview of the remedial actions, focusing on the excavation of wastes.

The remedial actions at the site began in August 1985 and were completed in January 1986. The Elizabethtown Water Company water main was extended to the affected residences and 13,763 cubic yards of visibly contaminated soils and debris were excavated and disposed of off-site in an approved hazardous waste disposal facility. The site was backfilled with clean fill, covered with six inches of top soil, and seeded in the spring of 1986.

The Agency for Toxic Substances and Disease Registry (ATSDR) completed a health assessment for the site in September 1986. ATSDR reviewed the residual soil data and determined that the concentrations of contaminants measured did not pose an imminent health threat via either ingestion or inhalation pathways. To ensure that the remediated area is left undisturbed, ATSDR recommended institutional controls and ground water monitoring.

The institutional controls for the site include a zoning ordinance by Hillsborough Township, which precludes land development due to the slope of the remediated area, and the mandatory water connection ordinance, which prohibits private well installation and use at the site. Both institutional controls have been implemented. A five year ground water monitoring program is being implemented by the State of New Jersey. That program commenced in May 1987.

EPA, with concurrence of the State of New Jersey, has determined that all appropriate Fund-financed responses under CERCLA at the Krysowaty Farm site have been completed, and that no further cleanup by responsible parties is appropriate.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 88-22185 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Part 67

[Docket No. FEMA-6939]

Proposed Flood Elevation Determinations; California et al.

AGENCY: Federal Insurance Administration Federal Emergency Management Agency.

ACTION: Proposed rule.

SUMMARY: Technical information or comments are solicited on the proposed modified base (100-year) flood elevations listed below for selected locations in the nation. These base (100-year) flood elevations are the basis for the floodplain management measures that the community is required to either adopt or show evidence of being already in effect in order to qualify or remain qualified for participation in the Natural Flood Insurance Program.

DATES: The period or comment will be ninety (90) days following the second publication of the proposed rule in a newspaper of local circulation in each community.

ADDRESSES: See table below.

FOR FURTHER INFORMATION CONTACT: Mr. John L. Matticks, Chief, Risk Studies Division, Federal Insurance Administration, Federal Emergency Management Agency, Washington, DC 20472, (202) 646–2767.

SUPPLEMENTARY INFORMATION: The Federal Emergency Management Agency gives notice of the proposed determinations of modified base (100-year) flood elevations for selected locations in the nation, in accordance with section 110 of the Flood Disaster Protection Act of 1973 (Pub. L. 93–234), 87 Stat. 980, which added section 1363 to the National Flood Insurance Act of 1968 (Title XIII of the Housing and Urban Development Act of 1968 (Pub. L. 90–448)), 42 U.S.C. 4001–4128, and 44 CFR 67.4(a).

These elevations, together with the floodplain management measures required by § 60.3 of the program regulations, are the minimum that are required. They should not be construed to mean that the community must change any existing ordinances that are more stringent in their floodplain management requirements. The community may at any time enact stricter requirements on its own, or pursuant to policies established by other Federal, State, or regional entities. These proposed modified elevations will also be used to calculate the appropriate flood insurance premium rates for new buildings and their contents and for the second layer of insurance on existing buildings and their contents.Pursuant to the provisions of 5 U.S.C. 605(b), the Administrator, to whom authority has been delegated by the Director, Federal Emergency Management Agency, hereby certifies that the proposed modified flood elevation determinations, if promulgated, will not have a significant economic impact on a substantial number of small entities. A flood elevation determination under section 1363 forms the basis for new local ordinances, which, if adopted by a local community, will govern future construction within the floodplain area. The local community voluntarily adopts floodplain ordinances in accord with these elevations. Even if ordinances are adopted in compliance with Federal standards, the elevation prescribed how high to build in the floodplain and do not proscribe development. Thus, this action only forms the basis for future local actions. It imposes no new requirements: of itself it has no economic impact.

List of Subjects in 44 CFR Part 67

Flood insurance, Floodplains.

PART 67—[AMENDED]

The authority citation for Part 67 continues to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*, Reorganization Plan No. 3 of 1978, E.O. 12127.

The proposed modified base flood elevations for selected locations are:

PROPOSED MODIFIED BASE FLOOD ELEVATIONS

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Alabama	City of Northport, Tuscaloosa County.	Twomile Creek Diversion	Confluence with Twomile Creek	None	*152
			Divergence with Twomile Creek	None	*153
		Twomile Creek Tributary No. 1.	Just downstream of 9th Avenue	*163	*163
			Just downstream of U.S. Highway 69	*172	*175
			About 350 feet downstream of 20th Avenue	*187	*187
Maps available for inspection at the City Hall, Northport, Alabama.					
Send comments to The Honorable Edward D. Robertson, Major, City of Northport, City Hall, P.O. Drawer 569, Northport, Alabama 35476.					
California	City of Ione Amador County	Sutter Creek	Approximately 20 feet upstream of the western corporate limits of the city.	None	*270
			Approximately 1,760 feet downstream of Preston Avenue.	None	*290
			Approximately 80 feet downstream of Preston Avenue.	None	*298
			Approximately 1,220 feet upstream of Preston Avenue.	None	*312
		Sutter Creek Overflow	Approximately 2,000 feet downstream of Depot Road.	None	*278
			At intersection of West Marlette Street and Depot Road.	None	*288
			At intersection of West Marlette Street and West Mill Street.	None	*296
			At point of divergence from Sutter Creek	None	*304
Maps are available for inspection at City Hall, 1 Main Street, Ione, California.					
Send comments to The Honorable Margaret Singer, Mayor, City of Ione, P.O. Box 398, Ione, California 95640.					
Colorado	City of Littleton Arapahoe and Douglas Counties.	South Platte River	Fairway Lane extended	*5,338	*5,338
			Approximately 2,300 feet upstream of Fairway Lane.	*5,343	*5,340
			At West Mineral Avenue Bridge	*5,351	*5,348
			At confluence with SJCD 6200	*5,355	*5,352
			At State Highway 470	*5,365	*5,365
			Lee Gulch at South Broadway	None	*5,537
			At East Mineral Avenue	None	*5,578
			At South Pennsylvania Avenue	None	*5,575

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps are available for inspection at the City of Littleton Department of Community Development, 2255 West Berry Avenue, Littleton, Colorado.					
Send comments to the Honorable Charley Emley, President, City Council, City of Littleton, 2255 West Berry Avenue, Littleton, Colorado 80165.					
Georgia	Unincorporated Areas of Cobb County.	Butler Creek	About 2,270 feet upstream of Mack Dobbs Road.	*971	*971
			About 0.99 mile upstream of Mack Dobbs Road.	*982	*985
			Just downstream of Pine Mountain Road	*985	*989
Maps available for inspection at the Cobb County Development Control Department, 47 Waddell Street, Marietta, Georgia.					
Send comments to The Honorable Earl Smith, Chairman, Cobb County Board of Commissioners, 10 East Park Square, Cobb County Administration Building, Marietta, Georgia 30090.					
Georgia	City of LaGrange, Troup County.	Dixie Creek	About 2,500 feet downstream of State Highway 219.	None	*649
			About 0.8 miles upstream of State Highway 219.	*681	*681
		Airport Branch 1	Just upstream of Forrest Avenue	*685	*685
			Just upstream of Gordon Commercial Drive	None	*703
		Blue John Creek	At confluence of Airport Branch 1	None	*642
			About 700 feet downstream of Orchard Hill Road.	*644	*644
Maps available for inspection at the City Hall, 200 Ridley Avenue, LaGrange, Georgia.					
Send comments to The Honorable J. Gardner Newman, Mayor, City of LaGrange, P.O. Box 430, LaGrange, Georgia 30241.					
Iowa	Unincorporated Areas of Mills County.	Missouri River	About 2.7 miles downstream of U.S. Route 34.	*957	*957
			About 0.5 mile upstream of Burlington Northern railroad.	*961	*962
			About 3.5 miles upstream of Burlington Northern railroad.	*965	*965
		Shallow flooding (ponding from interior drainage).	About 1.5 miles upstream from State Route 370 along the Missouri River on the landward side of the levee.	None	*963
			About 0.4 mile on State Route 370 from the east bank of the Missouri River on the landward side of the levee.	None	*962
			About 2.5 miles downstream from State Route 370 along the Missouri River on the landward side of the levee.	None	*959
			Just west of the Interstate 29 interchange at Folsom Lake.	None	*958
			About 3.5 miles upstream from Burlington Northern railroad along the Missouri River on the landward side of the levee.	*965	*958
			About 2.0 miles upstream from Burlington Northern railroad along the Missouri River on the landward side of the levee.	*964	*956
			The intersection of U.S. Route 34 and Eaton Ditch.	*960	*953
Maps available for inspection at the County Courthouse, Mills County, Glenwood, Iowa.					
Send Comments to The Honorable Wayne Keith, Chairman, County Board of Supervisors, Mills County, County Courthouse, Glenwood, Iowa 51534.					
Maryland	Allegany County Unincorporated Areas.	Wills Creek	Approximately 60 feet downstream of Locust Grove Road.	*659	*658
			Approximately 80 feet downstream of State boundary.	None	*730
		Jennings Run	Confluence with Wills Creek	*712	*715
			Approximately 360 feet upstream of confluence with Wills Creek.	*714	*715
		Braddock Run	Confluence with Wills Creek	*665	*667
			Approximately 550 feet upstream of confluence with Wills Creek.	*666	*667
Maps available for inspection at the Allegany County Planning and Zoning Commission, County Office Building, Cumberland, Maryland.					
Send comments to The Honorable Arthur T. Bond, President of the Allegany County Commission, County Office Building, Three Pershing Street, Cumberland, Maryland 21502.					
Minnesota	City of Hanover, Wright and Hennepin Counties.	Crow River	About 2.31 miles downstream of County Highway 123.	*891	*888
			About 0.90 mile upstream of County Highway 123.	*905	*900

PROPOSED MODIFIED BASE FLOOD ELEVATIONS—Continued

State	City/town/county	Source of flooding	Location	#Depth in feet above ground *Elevation in feet (NGVD)	
				Existing	Modified
Maps available for inspection at the City Hall, 11250 5th Street, N.W., Hanover, Minnesota.					
Send comments to The Honorable Maxine Ladda, Mayor, City of Hanover, City Hall, 11250 5th Street, N.E., Hanover, Minnesota 55341.					
New Jersey	Bridgewater Township, Somerset County.	Raritan River	Area south of Main Street and west of Interstate 287 at American Cyanamid Plant.	None	*38
			Area east of Cuckels Brook and south of Maine Street at American Cyanamid Plant.	None	*43
Maps available for inspection at the Municipal Building, 700 Garretson Road, Bridgewater, New Jersey.					
Send comments to The Honorable James T. Dowden, Mayor of the Township of Bridgewater, Somerset County, P.O. Box 6300, Bridgewater, New Jersey 08807.					
North Carolina	Unincorporated Areas of Cabarrus County.	Rocky River	At confluence of Mallard Creek	*570	*570
			About 0.8 mile upstream of SR 1600	None	*650
Maps available for inspection at the County Courthouse, 77 Union Street South, Concord, North Carolina.					
Send comments to The Honorable Martha Melvin, Acting County Manager, Cabarrus County, County Courthouse, 77 Union Street South, P.O. Box 707, Concord, North Carolina 28026.					
Pennsylvania	Eldred Borough, McKean County.	Barden Brook	Approximately 50 feet upstream of Bennett Street.	*1,446	*1,448
			Approximately 140 feet upstream of corporate limits.	None	*1,457
Maps available for inspection at the Borough Building, Three Bennett Street, P.O. Box 94, Eldred, Pennsylvania.					
Send comments to The Honorable William Luce, Mayor of the Borough of Eldred, McKean County, 184 Main Street, Eldred, Pennsylvania 16731.					
Tennessee	City of Cleveland, Bradley County.	South Mouse Creek	About 0.87 miles downstream of Mohawk Drive.	*768	*769
			Just downstream of Kile Road	*854	*852
			Just upstream of Kile Road	*855	*864
			Just downstream of Norfolk Southern Railway.	*855	*864
			Just upstream of Norfolk Southern Railway	*872	*876
			JUst upstream of Norfolk Southern Railway Spur.	None	*885
Maps available for inspection at the City of Cleveland, Engineering Department, Cleveland, Tennessee.					
Send comments to The Honorable Bill Schultz, Mayor, City of Cleveland, P.O. Box 1519, Cleveland, Tennessee 37364-1519.					
Utah	City of Salt Lake City, Salt Lake Co.	Little Cottonwood Creek	Approximately 4,360 feet above Little Cottonwood Creek Road.	*4,763	*4,763
			Approximately 4,780 feet above Little Cottonwood Creek Road.	*4,768	*4,769
			Approximately 5,760 feet above Little Cottonwood Creek Road.	*4,796	*4,794
			Approximately 6,740 feet above Little Cottonwood Creek Road.	*4,823	*4,820
			Approximately 7,700 feet above Little Cottonwood Creek Road.	*4,858	*4,854
			Approximately 9,060 feet above Little Cottonwood Creek Road.	*4,902	*4,902
Maps are available for inspection at the Flood Control and Highway Division, 2001 South State Street, #N3300, Salt Lake City, Utah.					
Send comments to The Honorable Bart Barker, Chairman, Salt Lake County Board of Commissioners, City and County Building, Salt Lake City, Utah 84111.					

Issued: October 11, 1988.

Harold T. Duryee,

Administrator, Federal Insurance Administration.

[FR Doc. 88-24086 Filed 10-18-88; 8:45 am]

BILLING CODE 6718-03-M

LEGAL SERVICES CORPORATION

45 CFR Part 1626

Restrictions on Legal Assistance to Aliens

AGENCY: Legal Services Corporation.

ACTION: Proposed rule.

SUMMARY: Revisions to 45 CFR Part 1626 are proposed to conform the rule to changes required by the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99-603, 100 Stat. 3359 (1986), and to LSC's appropriations act for fiscal year 1989, Pub. L. 100-459, 102 Stat. 2186 (1988).

DATE: Comments must be submitted on or before November 18, 1988.

ADDRESS: Comments should be mailed to the Office of the General Counsel, Legal Services Corporation, 400 Virginia Avenue, SW., Washington, DC 20024-2751.

FOR FURTHER INFORMATION CONTACT: Timothy B. Shea, General Counsel, 400 Virginia Avenue, SW., Washington, DC 20024-2751, (202) 863-1823.

SUPPLEMENTARY INFORMATION: Part 1626 was originally promulgated to implement the terms of Pub. L. 98–377, 96 Stat. 1874 (1982), the appropriations act for fiscal year 1983, which restricts the availability of legal assistance to certain aliens. 48 FR 19750 (May 2, 1983) (proposed rule); 48 FR 28089 (June 20, 1983) (final rule).

Part 1626 now requires revision to conform the rule to LSC's current appropriations act and to the Immigration Reform and Control Act of 1986 (IRCA), Pub. L. 99–603, 100 Stat. 3359.

In August 1987, the Immigration and Naturalization Service (INS) published a proposed rule pursuant to requirements of IRCA, 52 FR 31784 (August 24, 1987), which would include legal services provided by LSC recipients in the list of benefits or services unavailable to immigrants legalized under IRCA. The disqualification for services, which extends for five years, is based on section 245A(h)(1)(A)(i) of IRCA, which prohibits aliens newly legalized under IRCA from receiving benefits or services from any program of financial assistance furnished under Federal law on the basis of financial need. Pub. L. 99–603, 100 Stat. 3401.

LSC's appropriations act allows the provision of legal assistance to permanent resident aliens as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), 8 U.S.C. 1101(a)(20). Aliens who have acquired the status of temporary resident aliens under IRCA cannot qualify. However, within nineteen months of becoming temporary residents, aliens may apply for and receive the status of permanent resident aliens pursuant to section 245A(b) of IRCA, Pub. L. 99–603, 100 Stat. 3395. When they acquire permanent status, such aliens still do not become eligible for Corporation-funded legal assistance, because the five-year prohibition on receipt of such services applies during the five-year period regardless of their status. Section 1626.4(a)(1) has been revised to reflect this restriction on the availability of legal services to aliens.

IRCA delineates two new categories of aliens who are eligible for legal assistance from LSC recipients: Special Agricultural Workers admitted as permanent residents pursuant to section 101(a)(20) of INA, Pub. L. 99–603, 100 Stat. 3422; and H–2 workers who become eligible for legal services only with respect to certain specific matters, Pub. L. 99–603, 100 Stat. 3431.

Section 1626.3(c)

Section 1626.3(c) has been amended to conform to the terms of the alien restriction in Pub. L. 100–459. Public Law 100–459 repeats the terms of Pub. L. 97–377, LSC's appropriations act for fiscal year 1983, which originally contained the alien restriction, as have all subsequent appropriation acts. The present regulation allows representation of an eligible client which directly benefits an ineligible alien, except when there is no benefit to the eligible client. It expands the scope of legal assistance provided for in the act by, in effect, allowing representation "on behalf of" an ineligible alien under a pretense of representing an eligible client.

LSC's appropriation act, Pub. L. 100–459, 102 Stat. 2186, disallows the use of LSC funds to provide legal assistance "for or on behalf of" aliens, except for four categories of aliens. An alien may receive LSC-funded legal assistance if he or she is: (1) An alien who is present in the United States and is a lawfully admitted permanent resident as defined in section 101(a)(20) of INA; (2) an alien who is present in the United States and is a spouse or minor child of a United States citizen, and has filed an application for permanent resident status that has not been rejected; (3) an alien who is lawfully present in the United States pursuant to section 207 of INA (refugee admissions) or has been granted asylum by the Attorney General, or who is lawfully present in the United States as a result of receiving conditional entry pursuant to section 203(a)(7) of INA because of persecution or fear of persecution or being uprooted by catastrophic natural calamity; or (4) an alien who is lawfully present in the United States as a result of the Attorney General's withholding of deportation under section 243(h) of INA. Unless an alien falls within one of these categories, no LSC funds should be used to provide legal assistance "on behalf of" the alien. The present language of the regulation may allow such unintended representation.

It is clear that Congress intended the words "on behalf of" to preclude representation that "render[s] legal assistance to an eligible client which directly benefits an ineligible alien," *see* § 1626.3(c), when the ineligible alien is the intended beneficiary of the legal assistance. For example, one category of aliens eligible for legal assistance are the spouses and minor children of United States citizens. The present language of § 1626.3(c) would allow representation of an eligible permanent resident alien who is seeking to adjust the immigration status of relatives. Of course, while the eligible resident alien may be said to receive some legal services under such circumstances, the relatives of the eligible resident alien, who are ineligible for legal services, are clearly the principal beneficiaries of the service. Such representation would be at odds with the language and intent of LSC's alien restrictions, which allow representation for the spouses and minor children of United States citizens only, not family members of permanent resident aliens.

Congressional efforts in 1984 to add language to LSC's appropriations act that would have allowed representation of family members of permanent resident aliens were defeated, and Congress voted to retain the language of the 1983 funding act. 129 CONG. REC. H7024 (1983); 129 CONG. REC. 14446–14447 (1983). This same restrictive language has been retained in all subsequent LSC appropriations acts. Thus, in order to conform to the language of the appropriations act and congressional intent, the revised regulation would prohibit representation of an eligible client which directly benefits an ineligible alien, unless the benefit to the ineligible alien is incidental to the relief obtained for the eligible client.

Section 1626.4

The language of § 1626.4(a) has been changed to conform to the language of the appropriations act, which requires an alien to be present in the United States in order to be eligible for legal assistance. Pub. L. 100–459.

Section 1626.4(a)(1) has been revised to reflect the rule that aliens legalized pursuant to IRCA are not eligible for Corporation-funded legal assistance for five years from the day they receive their temporary resident status, whether or not they adjust their status to become permanent resident aliens during the five-year period.

The listing of categories of ineligible aliens in § 1626.4(b) has been deleted as unnecessary.

Section 1626.5

Section 1626.5 has been changed to delete the listing of documents which do not provide evidence of eligible alien status as unnecessary. The list of the documents identified in § 1626.5(b) to demonstrate eligibility is considered sufficient. No change in substance is intended.

The new paragraph (c) of § 1626.5 establishes that a Special Agricultural Worker who presents an INS Form I–688 is eligible for legal services.

Under the provisions of § 1626.5(e), legal assistance to potentially ineligible clients may be provided in an emergency situation, because the emergency provision is considered to be

the only instance in which a deviation from the verification requirement is warranted. Accordingly, § 1626.5(f), which permitted brief advice to potentially ineligible clients by telephone, has been deleted.

Section 1626.10(c)

Paragraph (a) has been revised to make the language of § 1626.10(a) more precise and, in addition, restates congressional intent that residents of these political entities are eligible to be clients of a legal services program.

A new paragraph (c) has been added to § 1626.10 to implement the provision of section 302 of the Immigration Reform and Control Act of 1986, 100 Stat. 3422, 8 U.S.C. 1160(g). Since Special Agricultural Workers are considered permanent resident aliens for all purposes after an adjustment in status to temporary resident aliens, these individuals are entitled to legal assistance. They are the only aliens who are entitled to legal assistance after an adjustment in status. Aliens who adjust their status under the general amnesty provisions of IRCA, 8 U.S.C. 1255a, are not entitled to legal assistance.

Section 1626.11

A new section to Part 1626 has been added in order to implement the provisions of section 305 of IRCA which delineate the circumstances under which H–2 workers are entitled to legal assistance. 100 Stat. 3434, 8 U.S.C. 1101 note.

Technical Corrections

The authority section of Part 1626 has been revised to reflect LSC's current appropriations act. In addition, § 1626.3(a) has been amended to provide that the regulation will continue in effect if the alien restriction continues to appear in succeeding appropriations acts.

List of Subjects in 45 CFR Part 1626

Aliens, Legal Services, Privacy, Reporting and recordkeeping requirements.

For the reasons set out above, 45 CFR Part 1626 is proposed to be amended as follows:

PART 1626—RESTRICTIONS ON LEGAL ASSISTANCE TO ALIENS

1. The table of contents is revised to read as follows:

Sec.
1626.1 Purpose.
1626.2 Definitions.
1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.
1626.4 Alien status and eligibility.
1626.5 Verification of citizenship and eligible alien status.
1626.6 Disposition of cases involving ongoing representation of ineligible aliens.
1626.7 Change in circumstances.
1626.8 Records.
1626.9 Use and confidentiality of records pertaining to determination of eligible alien status.
1626.10 Special eligibility questions.
1626.11 H–2 agricultural workers.

2. The authority citation for Part 1626 is revised to read as follows:

Authority: Sec. 1008(e); Pub. L. 93–355, 88 Stat. 378 (42 U.S.C. 2996g(e)); Pub. L. 99–603, 100 Stat. 3417; Pub. L. 100–459, 102 Stat. 2186.

3. Section 1626.1 is revised to read as follows:

§ 1626.1 Purpose

This part is designed to assist recipients in determining the eligibility and immigration status of persons who seek legal assistance, to provide guidelines for referral of ineligible persons, and to protect the confidentiality of information obtained from clients and prospective clients. This part does not apply to any case or matter in which assistance is not being provided with funds appropriated under Pub. L. 100–459 or any succeeding act which contains similar restrictions.

4. Section 1626.2 paragraph (b) is revised to read as follows:

§ 162.2 Definitions.

* * * * *

(b) "Ineligible alien" means an alien who does not meet the requirements of § 1626.4(a) and who is consequently determined not to be eligible to receive legal assistance under Pub. L. 100–459 or any succeeding act which contains similar restrictions.

* * * * *

5. Section 1626.3 paragraphs (a), (b)(1), (b)(2), and (b)(3) are revised, and paragraphs (c)(1) and (c)(2) are added to read as follows:

§ 1626.3 Prohibition of legal assistance "for or on behalf of" an ineligible alien.

(a) *General.* No funds made available to a recipient by the Corporation under the authority of Pub. L. 100–459 or any succeeding act which contains similar restrictions shall be used to provide legal services for or on behalf of any person unless that person is a citizen of the United States or an eligible alien.

(b)* * *

(1) To provide legal assistance "for" an ineligible alien is equivalent to furnishing legal assistance to a client and it shall be deemed to be coextensive with accepting an ineligible alien as a client. Consequently, all recipients are prohibited from using Corporation funds to pay any costs connected with furnishing legal assistance to clients who are ineligible aliens.

(2) Normal intake procedures and referral of ineligible alien clients by the same procedures used to refer other classes of ineligible clients are excepted from this prohibition. If a referral is not possible, and ineligible alien client may not be represented with Corporation funds that contain similar restrictions on such representation. If such an ineligible alien client is referred, a recipient may not participate further in the case using Corporation funds.

(3) The provisions of Section 1010(c) of the Legal Services Corporation Act, 42 U.S.C. 2996i(c), do not apply to the expenditure of funds to represent ineligible aliens. Such aliens may be represented if all costs of such representation, including staff time, are funded from non-Corporation sources.

(c)* * *

(1) To provide legal assistance "on behalf of" an ineligible alien is to render legal assistance to an eligible client which directly benefits an ineligible alien. Ineligible aliens may benefit only as an incidental result of the relief obtained for eligible clients. As an example, where a group of individuals renting a residence is faced with eviction, and one of the group is an eligible alien or a citizen, representation of that individual is allowed because there is a direct benefit inuring to the client represented which would exist even absent the involvement of ineligible clients. The other aliens may not be named as parties or represented and no relief may be sought for them, but they may receive an incidental benefit if successful representation of the eligible client leads to their not being evicted.

(2) Any case in which an eligible client seeks legal assistance to facilitate immigration of or adjustment of status of an ineligible alien constitutes provision of legal assistance "on behalf of" an ineligible alien, even if there is some benefit to the eligible client. The benefit to the eligible client occurs only as a consequence of the benefit to the ineligible alien. Consequently, the prohibition of assistance on behalf of an ineligible alien.

6. Section 1626.4 paragraphs (a) introductory text, (a)(1), and (b) are revised to read as follows:

§ 1626.4 Alien status and eligibility.

(a) Subject to all other eligibility requirements of the Act, an alien who is present in the United States and who is within one of the following categories shall be eligible for legal services:

(1) An alien lawfully admitted for permanent residence as an immigrant as defined by Section 1101(a)(20) of the Immigration and Nationality Act (INA) (8 U.S.C. 1101 (a)(20)) except that an alien who has adjusted his status to that of temporary resident alien under the provisions of Section 245A of INA (§ 201 of IRCA, 100 Stat. 3394, 8 U.S.C. 1255a) shall not be eligible for legal assistance pursuant to the provisions of 245A(h) of INA (8 U.S.C. 1255a(h)) for a period of five years, which commences on the date the alien is granted temporary resident alien status whether or not such alien acquires the status of permanent resident alien during the five-year period, unless the alien can qualify under another exception to the general restriction;

* * * * *

(b) An alien who is not within one of the eligibility categories defined in § 1626.4(a) shall not be eligible for legal services.

7. Section 1626.5 paragraphs (a)(5), (b)(1), and (c) are revised and paragraphs (a)(6) and (f) are removed as follows:

§ 1626.5 Verification of citizenship and eligible alien status.

(a) * * *

(5) Baptismal certificate showing place of birth within the United States and date of baptism within two months after birth.

* * * * *

(b) * * *

(1) An alien in the category specified in § 1626.4(a)(1) shall present an Alien Registration Receipt Card (INS Forms I–151 or I–551), or a valid passport and immigration visa.

* * * * *

(c) A Temporary Resident Card (INS Form I–688) shall be considered evidence of eligible alien status in the case of a Special Agricultural Worker. *See* § 1626.10(c). This form shall not be considered evidence of eligible alien status in the case of an alien who has obtained an adjustment in status under the General Amnesty provisions of Immigration Reform and Control Act (IRCA). 8 U.S.C. 1255a. *See* § 1626.4(a)(1).

* * * * *

8. Section 1626.6 paragraphs (a) introductory text, (a)(3), and (b)(1) are revised to read as follows:

§ 1626.6 Disposition of cases involving ongoing representation of ineligible aliens.

(a) A recipient may not use funds available to it under the authority of Pub. L. 100–459 or any succeeding act which contains similar restrictions to provide legal assistance to ineligible aliens; other alternatives must be used to dispose of pending cases in which the client is an ineligible alien. Generally three alternatives are available:

* * * * *

(3) Continuance of representation supported by funds available to the recipient either from non-Corporation sources or from unexpended carryover balances of pre-1983 Corporation funds. As such other funds will normally be limited, referral or discontinuance of representation should be chosen whenever not inconsistent with an attorney's professional responsibilities.

(b)(1) Where referral or discontinuance of representation is not possible and no other funds are available, the recipient may permit a staff attorney to complete the case (or bring it to a stage where referral or discontinuance is possible) on an uncompensated basis. In such instances, the attorney may use the necessary minimum of recipient overhead support, but direct expenditures of funds appropriated by Pub. L. 100–459 or any succeeding act which contains similar restrictions will not be permitted.

* * * * *

9. Section 1626.7 paragraphs (a) introductory text and (b) are revised to read as follows:

§ 1626.7 Change in circumstances.

(a) A recipient shall not use funds made available to it under the authority of Pub. L. 100–459 or any succeeding act which contains similar restrictions to provide legal assistance for or on behalf of an alien if:

* * * * *

(b) A recipient shall discontinue representation supported by funds authorized by the Corporation under the circumstances described in § 1626.7(a), provided discontinuance is not inconsistent with the attorney's professional responsibilities.

In discontinuing representation, a recipient shall follow the procedures set out in § 1626.6. In the event of discovery of false information relating to eligibility as set forth in § 1626.7(a)(3), steps to discontinue representation shall be taken immediately.

10. Section 1626.10 paragraph (a) is revised and paragraph (c) is added to read as follows:

§ 1626.10 [Amended]

(a) *Micronesia.* The alien restriction stated in the appropriations act is not applicable to the legal services program in the following Pacific Island entities:

(1) Commonwealth of the Northern Marianas;

(2) Republic of Palau;

(3) Federated States of Micronesia;

(4) Republic of the Marshall Islands.

All citizens of these entities are eligible to receive legal assistance, provided they are otherwise eligible under the Act.

* * * * *

(c) *Special Agricultural Workers.* An alien who qualifies as a special agricultural worker and whose status is adjusted to that of temporary resident alien under the provisions of IRCA is considered a permanent resident alien for all purposes except immigration under the provisions of section 302 of Pub. L. 99–603, 100 Stat. 3422, 8 U.S.C. 1160(g). Since the status of these aliens is that of permanent resident alien under section 1101(a)(20) of Title 8, these workers are eligible for legal assistance. These workers are ineligible for legal assistance in order to obtain the adjustment of status to temporary resident under IRCA, but are eligible for legal assistance after the adjustment of status to that of temporary resident.

11. Section 1626.11 is added to read as follows:

§ 1626.11 H–2 agricultural workers.

(a) Nonimmigrant agricultural workers admitted under the provisions of 8 U.S.C. 1101(a)(15)(H)(ii), commonly called H–2 workers, are considered to be aliens described in 8 U.S.C. 1101(a)(20) and, as such, are eligible for legal assistance regarding the matters specified in section 305 of the Immigration Reform and Control Act of 1986. Pub. L. 99–603, 100 Stat. 3434, 8 U.S.C. 1101 note.

(b) The following matters which arise under the provisions of the worker's specific employment contract may be the subject of legal assistance by an LSC-funded program:

(1) Wages;

(2) Housing;

(3) Transportation; and

(4) Other employment rights as provided in the worker's specific contract under which the nonimmigrant worker was admitted.

October 14, 1988.

Timothy B. Shea,

General Counsel.

[FR Doc. 88–24154 Filed 10–18–88; 8:45 am]

BILLING CODE 7050–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[General Docket 88-469; FCC 88-291]

Request for Declaratory Ruling; Radiofrequency Radiation Compliance

AGENCY: Federal Communications Commission (FCC).

ACTION: Proposed rule.

SUMMARY: This item proposes amending Part 1 of the Commission's Rules to establish a new category for exclusion from the requirements concerning routine evaluation of environmental radiofrequency (RF) radiation. This proposal is a result of a petition for declaratory ruling filed by Hammett & Edison, Inc. The new category would include any proposed facility or modification that would not cause an increase in RF levels of more than 1% of the allowable limits in any accessible area. It is also proposed to amend Part 1 so that, in accessible areas where the exposure limits are exceeded due to the presence of multiple transmitters, the responsibility for compliance with the RF guidelines will be shared by all transmitters contributing in excess of 1% of the limits. Another matter raised by the petitioner, the issue of measuring field intensities near re-radiating conductive objects and the creation of "hot spots," is discussed in this item. Although no specific proposal is made for amending the Rules with respect to the latter issue, further guidance is provided to licnensees.

DATES: Comments due December 13, 1988; reply comments due January 12, 1989.

ADDRESS: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Dr. Robert Cleveland, Office of Engineering and Technology, FCC, (202) 653-8169.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Notice of Proposed Rule Making*, General Docket 88-469, FCC 88-291, Adopted September 7, 1988, and Released Octobor 7, 1988.

The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. In order to fulfill its responsibilities under the National Environmental Policy Act (NEPA), the Commission has previously adopted rules (47 CFR 1.1301 *et seq.*) to provide for environmental processing of applications for facilities that might have environmental impact. Potential environmental impact from FCC-regulated services is possible due to human exposure to radiofrequency (FR) radiation from transmitting sources. Therefore, in 1985, the Commission adopted a *Report and Order* (50 FR 11151, 1985) to provide for evaluation for environmental RF radiation from ceratin FCC-authorized facilities and services. This was followed by a *Second Report and Order* (52 FR 13240, 1987) further defining FCC policy and providing for categorical exclusion of certain facilities. The Commission's policy in this area is set forth in § 1.1307(b) of the rules.

2. In 1987, the firm of Hammett & Edison, Inc. filed with the Commission a request for declaratory ruling with regard to evaluating compliance with safety guidelines for RF radiation. The Commission considered this request as a petition for rule making, and comments on the petition were solicited. The petitioner had requested clarification of Commission policy in three areas; (1) The definition of a broadcast "site"; (2) the term "significant" as quoted in the rules in NEPA; and (3) the treatment of intensified, localized electromagnetic fields found near re-radiating objects ("hot spots").

3. This item proposes establishing a new criterion for categorical exclusion from the requirements for routine evaluation of environmental RF radiation. The new excluded category would include any proposed facility or modification that would not cause an increase in RF levels in any accessible area of more than 1% of the allowable limits. Furthermore, it is proposed that in accessible areas where exposure limits are exceeded due to the presence of multiple transmitters, the responsibility for compliance with the guidelines will be shared by all transmitters contributing in excess of 1% of the limits.

4. The item also discusses the issue, raised by the petitioner, of measuring field intensities near re-radiating conductive objects and the creation of so-called "hot spots." No specific proposal is made for amending the Commission's rules with respect to this issues. However, further guidance is provided to licensees, and comment is solicited on this topic.

Initial Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. section 605, an initial regulatory flexibility analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be obtained from the Commission or its copy contractor. There should be no significant economic impact on a substantial number of small, regulated entities as a result of this action. Any action that might occur should be primarily limited to reducing costs of a proposed facility or modification by eliminating the economic burden of unnecessary environmental evaluation.

Ex Parte

This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of this Commission's rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

Ordering Clauses

Accordingly, *it is ordered* that, there is hereby instituted a *Notice of Proposed Rule Making* in this proceeding to amend Part 1 of the Commission's Rules and Regulations as set forth below. All interested parties may file comments on this specific proposal on or before December 13, 1988. Reply comments shall be filed on or before January 12, 1989. In accordance with § 1.1419, an original and five (5) copies of all filings shall be furnished to the Commission. Copies of comments and reply comments filed in this proceeding will be available for public inspection during regular business hours in the commission's Reference Room at 1919 M Stree, NW., Washington, DC 20554.

List of Subjects in 47 CFR Part 1

Practice and procedure, National Environmental Policy Act, radiofrequency radiation.

Proposed Rule Changes

It is proposed that Part 1, Chapter I, of Title 47 of the Code of Federal Regulations be amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for Part 1 continues to read:

Authority: Secs. 4(i), 4(j), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 154(j), and 303(r).

§ 1.1307 [Amended]

In § 1.1307, the note following paragraph (b) is revised as follows:

§ 1.1307 Actions which may have a significant environmental effect, for which environmental assessments (EAs) must be prepared.

* * * * *

(b) * * *

Note 1: Paragraph (b) shall apply to facilities and operations licensed or authorized under Parts 5, 25, 73, 74 (Subparts A and G only), and 80 (ship earth stations only). Facilities and operations licensed or authorized under all other Parts, Subparts, or Sections of the Commission's Rules shall be categorically excluded from consideration under this paragraph (b).

Note 2: A transmitter shall be categorically excluded from consideration under this paragraph (b) provided it can be shown that the transmitted does not or will not create electromagnetic fields in any accessible area that exceed 1% of the exposure limits (specified in this paragraph (b)) that apply to that transmitter.

Note 3: If the exposure guidelines specified in this paragraph (b) are exceeded in an accessible area due to emissions from multiple transmitters, responsibility for compliance shall be shared among all licensees whose transmiters contribute 1% or more of the exposure limit to the area of excessive radiation.

Note 4: The exclusions, noted above, of facilities, operations, or modifications from the provisions of this paragraph (b) may be superseded by actions taken by the Commission under the provisions of paragraph (c) or (d) of this section.

* * * * *

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24090 Filed 10-18-88;8:45am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 88-473, RM-6388]

Radio Broadcasting Services; Prescott Valley, AZ

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed on behalf of Lucky Communications, Inc., seeking the allotment of FM Channel 252C2 to Prescott Valley, Arizona, as that community's first wide coverage area FM broadcast service. Reference coordinates for this proposal are 34-31-50 and 112-15-12.

DATES: Comments must be filed on or before November 21, 1988, and reply comments on or before December 6, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Barry A. Friedman, Esq., Wilner and Scheiner, 1200 New Hampshire Ave., NW., Suite 300, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 88-473, adopted August 31, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24150 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 87-512; RM-6038]

Radio Broadcasting Services; Beaver, UT

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; dismissal of proposal.

SUMMARY: This document dismisses a petition filed by McAlester Broadcasting Systems of Utah, Ltd., proposing the allotment of Channel 284C2 to Beaver, Utah, as that community's first FM service, because of a lack of an expression of interest. With this action, this proceeding is terminated.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Patricia Rawlings, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 87-512, adopted September 1, 1988, and released September 30, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857-3800, 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Steve Kaminer,

Deputy Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 88-24092 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[BC Docket No. 81-742; DA 88-1549]

Broadcast Service; License Renewal Process and Abuses of That Process

AGENCY: Federal Communications Commission.

ACTION: Order extending time for filing comments.

SUMMARY: This action grants a motion for an extension of time for filing comments in response to the *Second Further Notice of Inquiry and Notice of Proposed Rule Making* (*Notice*) in BC Docket No. 81-742, 53 FR 31894 (August 22, 1988). The National Association of Broadcasters (NAB) requested that the deadline for filing comments be extended from October 7, 1988, to October 14, 1988, but that the November 7, 1988 deadline for filing reply comments not be altered. In support of this motion, NAB contended that a one week extension of time would allow for its analysis and presentation of relevant data regarding abuses of the renewable process that could be utilized by the Commission in its ultimate resolution of this proceeding. Since the *Notice* requested the type of data that NAB has gathered and since the requested extension appears reasonably necessary to facilitate analysis of this data, the Commission is extending the date for filing comments in this proceeding.

However, the date for filing reply comments is not being changed.

DATES: Comments are now due on or before October 14, 1988. Reply comments remain due on or before November 7, 1988.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Andrew J. Rhodes, Policy and Rules Division, Mass Media Bureau, (202) 632-7792.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Order Granting Motion for Extension of Time for Filing Comments*. The full text of this order is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC 20554. The complete text of this order may also be purchased from the Commission's copy contractor, International Transcription Services (202) 857-3800, 2100 M Street, NW., Suite 140, Washington, DC 20037..

Federal Communications Commission.

Alex D. Felker,

Chief, Mass Media Bureau

[FR Doc. 88-24145 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 76

[MM Docket No. 85-38; FCC 87-270]

Review of the Technical and Operational Requirements of Cable Television

AGENCY: Federal Communications Commission.

ACTION: Further Notice of Proposed Rule Making.

SUMMARY: This *Further Notice of Proposed Rule Making* proposes to extend the technical signal quality guidelines and policies the Commission adopted for Class I cable channels in the *Report and Order* in this proceeding to the television transmissions on Class II, III, and IV cable channels. These guidelines serve as both the non-mandatory federal signal quality standards for cable systems and the maximum performance standards that may be applied, but not exceeded, by state and local franchising authorities in their regulation of cable systems. This action is in response to a recent ruling by the U.S. court of Appeals that vacated the portion of the Commission's decision in the *Report and Order* relating to Class II, III, and IV cable channels and remanded the issue to the Commission for further proceedings.

DATES: Comments due December 12, 1988; replies due January 11, 1989.

ADDRESS: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Judith Herman, Mass Media Bureau (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's *Further Notice of Proposed Rule Making* MM Docket No. 85-38, adopted August 4, 1988, and released October 11, 1988. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, Northwest, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street, Northwest, Suite 140, Washington, DC 20037.

Summary of the Further Notice of Proposed Rule Making

1. In the *Report and Order* in this proceeding, the Commission eliminated all federal enforcement of cable signal quality standards, while at the same time retaining its federal pre-emption policy which prohibits local regulatoin of cable technical standards that exceed federal standards. The Commission reinstituted these technical standards, which historically applied to Class I (broadcast television signals) cable channels only, as guidelines. As such, these guidelines serve as both the non-mandatory federal standards for cable systems and the maximum standards that may be applied by state and local franchising authorities in their regulation of cable systems. The Commission also declined to adopt any guidelines for Class II (non-encoded, non-broadcast cable programming), Class III (encoded video and nonvideo programming), or Class IV (two-way transmission) channels and continued its policy of preempting state regulation of these channels. These rule and policy changes eliminated unnecessary federal regulation while also ensuring that cable systems are not subject to overly stringent or conflicting local technical regulations that may impede the growth and development of cable service.

2. On review, the U.S. Court of Appeals for the District of Columbia Circuit vacated the portion of the Commission's *Report and Order* addressing the Class II, III, and IV cable channels, stating that the absence of federal technical standards applicable to these classes of cable channels when combined with our pre-emption policy, might make it impossible for local franchising authorities to carry out their responsibilities to evaluate cable signal quality under the license renewal provisions of section 626 of the Cable Act. It ruled that the Commission's failure to consider the impact of this section of the Cable Act on its decision was arbitrary and capricious. The court, therefore, vacated the Commission's decision as it relates to Class II, III, and IV channels and remanded the case to the Commission for further proceedings consistent with its opinion.

3. In light of the court's ruling, the *Further Notice of Proposed Rule Making* proposes to extend the existing technical guidelines to the television transmissions on Class II, III, and IV cable channels. Application of our current Class I channel policies to the other classes of cable channels will provide local franchising authorities with adequate flexibility to establish objective standards for evaluating cable signal quality. Franchisors will then be able to fulfill effectively their responsibility to review a cable operator's signal quality as part of the application for license renewal under section 626 of the Cable Act. The Commission believes this proposal satisfies the court's concern that our rules not preclude franchisors from carrying out their statutory responsibilities, and also will prevent any adverse impact on cable television service that might result from overly stringent or conflicting technical regulations at the local level. The Commission also seeks comment with respect to what standards should be established for the nonvideo transmissions on Class III and IV cable channels. These services are still developing and we are concerned about the potential for technical regulations to stifle their growth and development.

4. This is a non-restricted notice and comment rule making proceeding. *See* § 1.1231 of the Commission's Rules, 47 CFR 1.1231, for rules governing permissible *ex parte* contacts.

5. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 603, this proceeding proposes to extend the technical signal quality guidelines and policies the Commission adopted for Class I cable channels to television transmissions on Class II, III, and IV cable channels. Local franchising

authorities will be provided with adequate flexibility to establish objective standards for evaluating cable signal quality and these rules also will prevent any adverse impact on cable television service that might result from overly stringent or conflicting technical regulations at the local level. Public comment is requested on the initial regulatory flexibility analysis set out in full in the Commission's complete decision.

6. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980 and found to impose no information collection requirement on the public.

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, 47 CFR 1.415 and 1.419, interested parties may file comments on or before December 12, 1988, and reply comments on or before January 11, 1988. All relevant and timely comments will be considered by the Commission before final action is taken in this proceeding.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

Appendix

47 CFR Part 76 is proposed to be amended as follows:

PART 76—[AMENDED]

1. The authority citation for Part 76 would continue to read as follows:

Authority: 47 U.S.C. 154 and 303.

2. 47 CFR 76.605 is proposed to be amended by revising paragraph (a) introducing text.

§ 76.605 Technical standards.

(a) The following requirements apply to the performance of a cable television system as measured at any subscriber terminal with a matched termination, and to the delivery of a television (video) signal on each channel in any of the classes of cable television channels the system may provide (*i.e.*, Class I, Class II, Class III, and IV as defined in § 76.5(t) through (w) of this chapter). In the case of encoded signals on Class III and IV channels, signal performance shall be measured after any decoding or related processing.

* * * * *

[FR Doc. 88-24089 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

Federal Motor Vehicle Safety Standards; Denial of Petition for Rulemaking on Lamps, Reflective Devices, and Associated Equipment

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Denial of petition.

SUMMARY: NHTSA denies a petition from Insurance Institute for Highway Safety (IIHS) for reconsideration of the agency's termination of rulemaking on daytime running lights (DRLs). Petitioner argued that there is a substantial safety need addressed by optional use of DRLs, and that a Federal regulation permitting their use would promote the international harmonization of safety standards. Furthermore, petitioner argued, the benefits would outweigh the effects of preempting state or local laws or regulations. The agency denies the petition on the basis that the petitioner failed to submit any arguments to substantiate its position that the agency did not consider in its original decision to terminate rulemaking.

FOR FURTHER INFORMATION CONTACT: Jere Medlin, Office of Rulemaking, NHTSA (202-366-5276).

SUPPLEMENTARY INFORMATION: On June 23, 1988, NHTSA published a notice of Termination of Rulemaking with regard to daytime running lights (DRLs) 53 FR 23673. The agency had proposed that DRLs be optional on passenger cars, but terminated rulemaking for several reasons. First, manufacturers who commented on the proposal did not intend to take present advantage of such an option. Second, because a national safety need warranting mandatory adoption of DRLs had not been shown, in accordance with the guidelines of Executive Order 12612 "Federalism", the agency declined to adopt a rule that would have a preemptive effect on State laws.

On July 22, 1988, the Insurance Institute for Highway Safety (IIHS) filed a petition for reconsideration of the decision to terminate rulemaking. The agency notes that its rulemaking procedural rules do not contemplate a petition for reconsideration of a rulemaking petition denial. See generally 49 CFR Part 552; compare with 49 CFR 553.35. The denial of such petitions is a final agency action. Therefore, the agency has treated the IIHS request as a new petition for rulemaking. In that context, the agency has considered the arguments put forth by IIHS and will explain why it is not opening a rulemaking proceeding to provide for the optional use of DRLs.

The petition contained four primary arguments related to potential safety benefits, manufacturer support, a balance of safety and preemption issues, and the promotion of international harmonization.

With respect to potential safety benefits, IIHS argued that "NHTSA concluded that there was no national safety need demonstrated for their use", then cited the accident reduction figures of the Scandinavian experience. In fact, what NHTSA said was that no national safety need that warranted *mandating* this item of equipment had been demonstrated. The level of accident reduction benefits that could be expected from use of DRLs in the United States is not clear. The experiences of Scandinavian countries with DRLs are not completely applicable to the United States. The results of the U.S. fleet study conducted by the IIHS were not statistically significant. As previously noted, NHTSA believes there may be some safety benefit in the use of DRLs in the U.S., and will carefully evaluate any new data on their effectiveness. However, there is not yet sufficient evidence to support a mandatory DRL rule.

With respect to support of DRLs by manufacturers, IIHS cited statements that some manufacturers were "considering" them but "not before 1990". As NHTSA indicated in its June notice, it found no actual plans to introduce DRLs in production. It is not inconsistent for manufacturers to support the concept of DRLs without obligating themselves to manufacture vehicles with them. The agency's decision hinged on the absence of manufacturer plans to produce vehicles with DRLs even if the proposed rule had been adopted.

IIHS also noted that General Motors had indicated that the corporate average fuel economy (CAFE) standards constrained its ability to offer DRLs on its vehicles sold in the U.S. NHTSA recently revised the passenger car CAFE standards for model year 1989, and plans to issue a decision on the 1990 model year standards later this year. If manufacturers should subsequently decide to introduce DRLs on their vehicles (because of revised CAFE standards or for other reasons), *and* State laws appear to present barriers to such equipment, then NHTSA would be willing to reconsider the need for a Federal "permissive" standard on DRLs.

However, the agency believes that it would be faster for all parties concerned (insurers, automakers, NHTSA and State safety agencies) to work directly for State action to eliminate any barriers to DRLs under State laws. That approach seems particularly appropriate where, as here, all parties agree that such barriers are entirely inadvertent and do not reflect opposition by States to the DRL concept.

With respect to balancing of safety and preemption issues, IIHS argued that preemption of State laws is consistent with the express provisions of 15 U.S.C. 1392(d), and with Executive Order 12612 when the problem is national in scope. Although vehicle collision is a problem that occurs nationwide, the effectiveness of a regulatory remedy of a mandatory DRL was not demonstrated. Therefore, no need was shown for preemption of State laws that might prevent DRLs.

Finally, IIHS argued that DRLs promote international harmonization, and that conflicting State laws will serve as a barrier to the free movement of traffic between the United States and Canada (which recently adopted a requirement for DRLs on new vehicles sold in that country). IIHS said that if NHTSA does not take action to preempt conflicting State laws, those laws will serve as obstacles to foreign manufactured vehicles that are equipped with DRLs. It cited Title IV of the Trade Agreement Act of 1979 under which Federal agencies shall, in developing standards, take into consideration international standards, and not engage in any standards-related activity that creates unnecessary obstacles to the foreign commerce of the United States. NHTSA's actions are consistent with Title IV. It took the Canadian proposal into account in developing the proposed U.S. Federal standard. If NHTSA's proposal had been adopted, the U.S. Federal standard would have been consistent with the Canadian one. However, NHTSA does not read Title IV as obligating the United States to issue a standard solely for the purpose of preempting the laws of the individual States, as a means of facilitating international commerce. Further, this agency is not aware of any actual conflicts between State laws and foreign registered vehicles that were manufactured to specifications other than those of the United States and are in daily use by tourists in this country.

Finally, NHTSA wishes to reiterate its continuing interest in DRLs, and its intent to monitor any safety benefit studies made by the Canadian Government. It will work with the States to remove any legislation that may prohibit the use of DRLs, and will encourage organizations such as the American Association of Motor Vehicle Administrators and the National Committee on Uniform Traffic Laws and Ordinances to urge the States to cooperate in this endeavor.

(15 U.S.C. 1410a; delegations of authority at 49 CFR 1.50 and 501.8)

Issued on October 14, 1988.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 88-24190 Filed 10-18-88; 8:45 am]

BILLING CODE 4910-59-M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1312

[Ex Parte No. 290 (Sub-No. 6)]

Amendments to Rail Carrier Cost Recovery Tariffs

AGENCY: Interstate Commerce Commission.

ACTION: Extension of time to file comments to advance notice of proposed rulemaking.

SUMMARY: In the **Federal Register** advance notice of proposed rulemaking, August 19, 1988, (53 FR 31720), the Commission sought comments dealing with problems encountered by users of the rail carrier cost recovery tariffs and suggestions for changes of the rules pertaining to the tariffs. The notice was prompted by the receipt of informal criticisms which indicated that the tariffs have become extremely cumbersome to follow and apply. Comments are due October 18, 1988. The Fertilizer Institute has requested that this date be postponed for 30 days. This matter was considered at a recent conference of The Fertilizer Institute's Transportation Committee and the additional time will be needed for the formulation of comments. Since it is the desire of the Commission to elicit meaningful comments from all parties, an extension of 20 days is granted.

DATES: Comments must be submitted by November 7, 1988.

ADDRESS: Send an original and 10 copies of comments referring to Ex Parte No. 290 (Sub-No. 6), to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Lawrence C. Herzig, (202) 275-7358 or Charles E. Langyher (202) 275-7739. TDD for hearing impaired (202) 275-1721..

Decided: October 14, 1988.

By the Commission, Heather J. Gradison, Chairman.

Noreta R. McGee,

Secretary.

[FR Doc. 88-24203 Filed 10-18-88; 8:45 am]

BILLING CODE 7035-01-M

Notices

Federal Register
Vol. 53, No. 202
Wednesday, October 19, 1988

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Committee on Adjudication, Committee on Judicial Review and Working Group on Model Rules; Public Meetings

Pursuant to the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given of meetings of the Committee on Adjudication, Committee on Judicial Review and the Working Group on Model Rules of the Administrative Conference of the United States.

Committee on Adjudication

Date: Friday, October 28, 1988.
Time: 1:00 p.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC 20037.
Agenda: The committee will meet to discuss a study by Professor Timothy S. Jost of Ohio State University College of Law, on peer review and sanctions in the Medicare program.
Contact: Phyllis Gottesman, 202–254–7065.

Committee on Judicial Review

Date: Wednesday, October 26, 1988.
Time: 10:00 a.m.
Location: Administrative Conference of the United States Library, 2120 L Street NW., Suite 500, Washington, DC.
Agenda: The Committee will be discussing a draft report by Professor Robert A. Anthony of George Mason University concerning which statutory interpretations by federal administrative agencies (e.g., those made in legislative regulations, in formal adjudications, in instructions to agency staff, in correspondence, etc.) should be entitled to full deference by the Federal courts under *Chevron U.S.A., Inc. v. National Resources Defense Counsel, Inc.*, 467 U.S 837 (1984).
Contact: Mary Candace Fowler 202–254–7065.

Working Group on Model Rules

Date: Friday, November 4, 1988.
Time: 12:00 p.m.
Location: Administrative Conference of the United States Library, 2120 L Street, NW., Suite 500, Washington, DC.
Agenda: The Working Group will meet as part of an ongoing effort to develop model rules of practice and procedure which can be used by Federal agencies in formal adjudications.
Contact: Gary J. Edles, 202–254–7020.

Public Participation

Attendance at the committee meetings in open to the public, but limited to the space available. Persons wishing to attend should notify the contact person at least three days in advance of the meeting. The commitee chairmen may permit members of the public to present oral statements as meetings. Any member of the public may file a written statement with a committee before, during, or after a meeting. Minutes of the meetings will be available on request to the contact persons. The contact person's mailing address is: Administrative Conference of the United States, 2120 Street, NW., Suite 500, Washington, DC 20037.

October 17, 1988.
Jeffrey S. Lubbers,
Research Director.
[FR Doc. 88–24281 Filed 10–18–88; 8:45 am]
BILLING CODE 6110–01–M

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Invitation for Nominations to a Dietary Guidelines Advisory Committee

The Department of Agriculture will shortly be announcing its intention to establish, in cooperation with the Department of Health and human Services, a Dietary Guideline Advisory Committee to advise the Secretary of Agriculture and the Secretary of Health and Human Services as to whether a revision of the Dietary Guidelines for Americans is warranted as the present time based on advances in scientific knowledge and if such a revision is warranted to advise the Secretaries regarding any recommended revision to the Guidelines. Prospective members should be familiar with current scientific knowledge in the field of human nutrition. Based on their knowledge current research related to dietary guidance issues, the Committee members will determined if revision of the 1985 edition of "Nutrition and your Health: Dietary Guidelines for Americans" is warranted at this time.

The Department invites nominations for Committee membership of individuals who are qualified to carry out the above-mentioned tasks. Such noiminations should describe and document the noninee's qualifications in the relevant subject areas. Nominations for the initial formation of the Committee may be submitted to the Deputy Assistant Secretary for Food and Consumer Services, U.S. Department of Agriculture, Room 207-W, Administration Building, Washington, DC 20250, until November 4, 1988.

Done at Washington, DC, this 14th day of October, 1988.
Suzanne S. Harris,
Deputy Assistant Secretary for Food and Consumer Services.
[FR Doc 88–24188 Filed 10–18–88; 8:45 am]
BILLING CODE 3410–48–M

Forest Service

Umpqua National Forest Boundary Extension, Tiller Administrative Site; Oregon Correction to Land Description

AGENCY: Forest Service, USDA.
ACTION: Final notice; correction.

SUMMARY: On August 5, 1988, at 53 FR 29506, the Forest Service published a Notice of Boundary Extension for the Umpqua National Forest, Oregon. This notice corrects elements of the legal land description as follows:.

1. On page 29506, in the third column, under Douglas County, in the second paragraph, in the second line, "918.34" should read "918.34".

2. On page 29506, in the third column, under Douglas County, in the second paragraph, in the fourth line, "S23°48'W" should read "S23°48'E".

Dated: October 11, 1988.
Larry Henson,
Associate Deputy Chief.
[FR Doc. 88–24024 Filed 10–18–88; 8:45 am]
BILLING CODE 3410–11–M

Implementation of Management Activities in the Van Alder Area

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare an Environmental Impact Statement (EIS) to analyze and disclose the environmental impacts of site-specific forest management activities necessary for implementation of the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986) in the Van Alder area of the Swan Lake Ranger District, Flathead National Forest, Lake County, Montana. Management activities may include trail and/or trailhead renovation, wildlife habitat improvement, timber harvest, livestock grazing, road construction and reconstruction, timber stand improvement, and road management for the approximate period from 1989 to 1998. The agency invites written comments and suggestions on the scope of the analysis and management opportunities. In addition, the agency gives notice of the full environmental analysis and decision making process that will occur on the proposal so that interested and affected parties are aware of how they may participate and contribute to the final decision.

DATE: Comments concerning the scope of the analysis must be received by November 15, 1988.

ADDRESS: Send written comments to William L. Pederson, District Ranger, Swan Lake Ranger District, P.O. Box 370, Bigfork, MT 59911.

FOR FURTHER INFORMATION CONTACT: The Van Alder Interdisciplinary Team Leader, Swan Lake Ranger District, Flathead National Forest, P.O. Box 370, Bigfork, MT 59911.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to implement forest management activities in the Van Alder area over the approximate period from 1989 to 1998. These management activities may include trail and/or trailhead renovation, wildlife habitat improvement, timber harvest, livestock grazing, road construction and reconstruction, timber stand improvement, and road management.

Management activities under construction would occur in an area encompassing approximately 20,000 acres of multi-ownership lands in the northeastern portion of the Upper Swan Geographic Unit, as delineated in the Flathead Forest Plan. Of this total, approximately 9,000 acres are National Forest System lands.

Included in the area of analysis are all or portion of the following drainages:

Lion, Pony, Alder, Dog, Meadow, and Cat Creeks. The area is bordered on the west by the Swan River, on the east by the proposed Swan Front Wilderness, the Missoula/Lake County line on the south, and Van Lake on the north. Proposed management activities will be considered in all or portions of sections 2, 4, 8, 10, 12, 14, 16, 22, 24, 26, 34, and 36, T22N, R17W; section 2, T21N, R17W; sections 19 and 30, T22N, R16W; and section 6, T21N, R16W, Principal Montana Meridian.

The analysis will consider a range of alternatives. One of these will be the "no-action" alternative, in which all activities would be deferred during the decade. Another alternative may include management activities to optimize security for deer and elk on winter range. Other alternatives may include management activities which vary in time and space to emphasize a balance between winter habitat and timber production, or to emphasize timber production. The analysis will disclose the environmental effects of alternative ways of implementing land and resource management direction contained in the Flathead National Forest Land and Resource Management Plan (EIS and Record of Decision, January 22, 1986).

Public participation is important during the analysis. The first point of public participation is during the scoping process (40 CFR 1501.7). The Forest Service is seeking information and comments from Federal, State, and local agencies and individuals or organizations who may be interested in or affected by the proposed action. This information will be used in preparation of the draft environmental impact statement (DEIS). The scoping process includes:

1. Identification of potential issues.
2. Identification of issues to be analyzed in depth.
3. Elimination of insignificant issues or those which have been covered by a relevant previous environmental analysis.
4. Identification of additional reasonable alternatives.
5. Identification of potential environmental effects of the alternatives (i.e., direct, indirect, and cumulative effects, and connected actions).
6. Determination of potential cooperating agencies and task assignments.

Scoping has already been utilized for the development of an environmental assessment (EA). Initial scoping began on January 8, 1987 through letters sent to potentially affected parties. Numerous newspaper articles have described the analysis process. An open house and field trip were also offered to the public in order to solicit comments and information. An EA was prepared in April, 1988. Approximately 50 copies of the EA were distributed to persons or groups indicating interest in the analysis. Numerous written responses to the asssessment have been received.

Notwithstanding the scoping that has been done to date, additional comments or questions are being solicited at this time. Comments received by November 15, 1988 will be considered in the preparation of the DEIS. The Forest Service has not yet determined whether any public meetings will be held.

The U.S. Fish and Wildlife Service, Department of the Interior, will be invited to participate as a cooperating agency to evaluate potential impacts on threatened and endangered species.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in January, 1989. At that time the EPA will publish a notice of availability of the DEIS in the **Federal Register.**

The comment period on the DEIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register.** It is very important that those interested in the management of the Van Alder area participate at that time. To be most helpful, comments on the DEIS should be as specific as possible and may address the adequacy of the DEIS or the merits of the alternatives discussed (40 CFR 1503.3). In addition, Federal court decisions have established that reviewers of draft EIS's must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewers' position and contentions (*Vermont Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519 (1978)). Environmental objections that could have been raised at the draft stage may be waived if not raised until after completion of the final environmental impact statement (FEIS) (*Wisconsin Heritages, Inc. v. Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980)). The reason for this is to ensure that substantive comments and objections are made available to the Forest Service at a time when it can meaningful consider them and respond to them in the FEIS.

Following the comment period for the DEIS the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The Forest Service is required to respond in the FEIS to the comments received (40 CFR 1503.4). The FEIS is scheduled to be completed in March, 1989.

The responsible official will consider the comments and responses, environmental consequences discussed

in the FEIS, and applicable laws, regulations, and policies in making a decision regarding the proposal. The responsible official will document the decision and the rationale for the decision in the Record of Decision. That decision will be subject to review under applicable Forest Service regulations.

William L. Pederson, District Ranger for the Swan Lake Ranger District, Flathead National Forest, is the Responsible Official.

Dated: October 7, 1988.

William L. Pederson,

District Ranger, Swan Lake Ranger District, Flathead National Forest.

[FR Doc. 88-24173 Filed 10-18-88; 8:45 am]

BILLING CODE 3410-11-M

COMMISSION ON CIVIL RIGHTS

Arizona Advisory Committee; Agenda and Notice of Public Forum

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that the Arizona Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 3:00 p.m. on November 3, 1988, at the Holiday Inn, 181 West Broadway, Tucson, Arizona 85701. The Advisory Committee will conduct a forum to obtain information on the Phase I and Phase II provisions of the Immigration Reform and Control Act of 1986.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, John White or Philip Montez, Director of the Regional Division (213) 894-3437, (TDD 213/894-0508). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provision of the rules and regulations of the Commission.

Dated at Washington, DC., October 7, 1988.

Melvin Jenkins,

Acting Staff Director.

[FR Doc. 88-24163 Filed 10-18-88; 8:45 am]

BILLING CODE 6335-01-M

New Mexico Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the New Mexico Advisory Committee to the Commission will convene at 1:00 p.m. and adjourn at 4:00 p.m. on November 10, 1988 at the Hilton of Santa Fe, 100 Sandoval Street, Santa Fe, New Mexico 87501. The purpose of the meeting is to discuss civil rights issues affecting the State, and to plan future Advisory Committee projects.

Person desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson, Vincent Montoya, or Philip Montez, Director of the Western Regional Division, (213) 894-3437, (TDD 213-894-3437). Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact the Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 11, 1988

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-24073 Filed 10-18-88; 8:45 am]

BILLING CODE 6335-01-M

South Carolina Advisory Committee; Agenda and Notice of Public Meeting

Notice is hereby given, pursuant to the provisions of the Rules and Regulations of the U.S. Commission on Civil Rights, that a meeting of the South Carolina Advisory Committee to the Commission will convene at 10:00 a.m. and adjourn at 1:00 p.m. on Thursday, November 10, 1988, in the Humphries Hall Room, Columbia College, North Main St., University of South Carolina, Columbia, SC 29203. The Committee will meet for orientation of new members, staff reports on the status of the agency and Committee actions, and program planning.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dennis W. Shedd or John I. Binkley, Director, Eastern Regional Division at (202) 523-5264, TDD (202) 376-8117. Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Eastern Regional Division at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, October 7, 1988.

Melvin L. Jenkins,

Acting Staff Director.

[FR Doc. 88-24164 Filed 10-18-88; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Request for Special Priorities Assistance.

Form Numbers: Agency—ITA-999. OMB—0625-0015.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 1,800 respondents; 900 reporting hours.

Average Hours Per Response: 30 minutes.

Needs And Uses: Defense contractors may request Special Priorities Assistance (SPA) when placing defense rated orders with suppliers to obtain timely delivery of products or materials from suppliers, or for any other reason under the Defense Priorities and Allocations System (DPAS), in support of authorized national defense and energy programs. Form ITA-999 is the method by which information concerning DPAS problems can be communicated in writing by the contractors to the appropriate defense agency and OIRA officials for assistance and resolution. The information is used by the Department of Defense and its associated agencies, the Department of Energy, and the Office of Industrial Resource Administration (ORIA) within the International Trade Administration to provide SPA.

Affected Public: Businesses or other for profit; small businesses or organizations; Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622,

14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 14, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-24169 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-CW-M

Agency Form Under Review by the Office of Management and Budget (OMB)

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Agency: International Trade Administration.

Title: Defense Priorities and Allocations System (DPAS). OMB—0625-0107.

Form Numbers: Agency—DPAS.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 25,000 respondents; 16,667 reporting hours.

Average Hours Per Response: 1 minute.

Needs and Uses: The recordkeeping requirement is necessary to support the administration and enforcement of the DPAS regulation. It assures the availability of records for at least 3 years of transactions that are directly related to the placement of contracts or purchase orders under DPAS by contractors with supplies to acquire items (materials, products, and services) needed to fill defense orders. This facilitates the audit process included in the DPAS regulation.

Affected Public: Businesses or other for profit; small businesses or organizations; Federal agencies or employees.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Donald Arbuckle, 395-7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edward Michals, (202) 377-3271, Department of Commerce, Room 6622, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Donald Arbuckle, OMB Desk Officer, Room 3208 New Executive Office Building, Washington, DC 20503.

Dated: October 13, 1988.

Edward Michals,

Departmental Clearance Officer, Office of Management and Organization.

[FR Doc. 88-24170 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-CW-M

Assistant Secretary for Communications and Information

Advisory Committee on Advanced Television; Establishment

In accordance with the provisions of the Federal Advisory Committee Act, 5 U.S.C. App. 2, and the General Services Administration (GSA) rules on Federal Advisory Committee Management, 41 CFR Part 101-6, and after consultation with GSA, the Secretary of Commerce has determined that the establishment of the Advisory Committee on Advanced Television is in the public interest in connection with the performance of duties imposed on the Department by law.

The Committee will advise the Secretary on the impact of advanced television on the competitiveness of U.S. industry, what policies may be pursued to heighten the development of advanced television in the public interest, and other related issues.

The Committee will consist of ten members to be appointed by the Secretary to ensure a balanced representation of private industries that will likely be affected by advanced television and the academic community.

The Committee will function solely as an advisory body, and in compliance with provisions of the Federal Advisory Committee Act. The charter will be filed under the Act, fifteen days after the publication of this notice.

Interested persons are invited to submit comments regarding the establishment of this committee to Richard M. Firestone, Chief Counsel (Acting), National Telecommunications and Information Administration, U.S. Department of Commerce, Room 4717, Washington, DC 20230, telephone 202-377-1816.

Dated: October 14, 1988.

Alfred L. Sikes,

Assistant Secretary for Communications and Information.

[FR Doc. 88-24192 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-60-M

International Trade Administration

[A-588-087]

Portable Electric Typewriters From Japan Final Results of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Commerce.

ACTION: Notice of final results of antidumping duty administrative review.

SUMMARY: On June 3, 1988, the Department of Commerce published the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters from Japan. The review covers eleven manufacturers and/or exporters of this merchandise to the United States and various periods from April 1, 1982 through April 30, 1986 (but generally from May 1, 1982 through April 30, 1986).

We gave interested parties an opportunity to comment on the preliminary results. Based on our analysis of the comments received and the correction of certain clerical errors, we have changed the margins from those presented in our preliminary results.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Kathleen Kelleher or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone (202) 377-2923.

SUPPLEMENTARY INFORMATION:

Background

On June 3, 1988, the Department of Commerce ("the Department") published in the **Federal Register** (53 FR 20353) the preliminary results of its administrative review of the antidumping duty order on portable electric typewriters ("PETs") from Japan (45 FR 30618, May 9, 1980). The Department has now completed that administrative review in accordance with section 751 of the Tariff Act of 1930 ("the Tariff Act").

Imports covered by this review are shipments of portable electric typewriters currently classified under Tariff Schedules of the United States Annotated ("TSUSA") item 676.0510, and some currently classifiable under TSUSA item 676.0540, and Harmonized Tariff System item numbers HS 8469.21.00 and 8469.29.00.

As stated in the preliminary results notice, the scope of the antidumping duty order is currently in litigation. On September 20, 1988, the Court of

International Trade upheld the Department's determination, upon remand, that portable electric typewriters incorporating a calculating mechanism are within the scope of the antidumping duty order, and reversed the Department's determination that portable electric typewriters with text memory ("automatic portable electric typewriters), are not included in the scope of the order. *See Smith Corona Corporation v. United States*, Slip Op. 88–127 (September 20, 1988). If this decision is finally affirmed by the courts, we will separately review unliquidated entries of automatic portable electric typewriters, and portable electric typewriters incorporting a calculating mechanism. The products subject to this review are non-automatic portable electric typewriters that do not incorporate a calculating mechanism.

The review covers eleven manufacturers and/or exporters of Japanese portable electric typewriters to the United States and various periods from April 1, 1982 through April 30, 1986 (but generally from May 1, 1982 through April 30, 1986).

Analysis of Comments Received

We invited interested parties to comment on the preliminary results. We received timely comments from the petitioner, Smith Corona Corporation ("SCM"), and seven respondents, Brother Industries Ltd. and Brother International Corporation ("Brother"), Canon Inc. and Canon U.S.A. ("Canon"), Nakajima All Co., Ltd. ("Nakajima"), Silver Seiko, Ltd. and Silver Reed America ("Silver"), Towa Sankiden Corporation ("Towa"), Juki Corporation and Juki Office Machine Corporation ("Juki"), and Matsushita Electric Corporation of America ("Matsushita").

We also received comments from one respondent, Ricoh Corporation, and one importer, Sears Roebuck and Co., on July 15, 1988 and August 31, 1988, respectively. Because these comments were received after the close of the comment period, we have not considered them for these final results.

Analysis of Petitioner's Comments

Comment 1: SCM argues that U.S. prices should be reduced by the full amount of advertising expenses incurred by Brother in Japan and in the United States for sponsorship of the 1984 Olympic games. The Olympic advertising campaign was image-building for the company's entire typewriter line and the expenses should be attributed to all U.S. typewriter sales. Many models covered by the scope of this review are sold through office equipment dealers in addition to consumer product outlets. SCM maintains that, although it was determined in the review of the 1981–82 period that the 1984 Olympic campaign was directed towards Brothers' office typewriter line, a portion of the expenses are attributable to PET models sold by office equipment dealers, because they benefited directly from the Olympic advertising campaign.

SCM states that deductions for this expense were improperly allocated to third-country and home market sales as well as to U.S. sales. SCM argues that even indirect selling expenses must be attributed to a particular market. To allocate these expenses as direct selling expenses on the basis of the value of world-wide sales is contrary to Department precedent. Furthermore, Brother has failed to establish that the expenses could be reasonably allocated to markets on the basis of sales value. Therefore, all Olympic advertising expenses should be allocated only over U.S. sales.

Brother argues that the deduction of the Olympic advertising expenses is contrary to agency practice. *See Color Television Receivers from Korea* (49 FR 50420, December 24, 1984), *Television Receiving Sets, Monochrome and Color, from Japan* (50 FR 24278, June 10, 1985) and *Color Picture Tubes from Japan* (52 FR 44171, November 18, 1987). Brother asserts that in these cases it was established that model-specific or product-specific advertisements are directly related to the product shown or described in the advertisement. Therefore, the cost for each advertisement may be deducted in calculating United States price ("USP"), or foreign market value ("FMV"), only for the product or model in the advertisement. Brother stresses that verification of this expense in the prior review indicated that all Olympic advertisement were directed towards Brother's "office" typewriters and all model-specific advertisements depicted an EM-series office machine.

In addition, Brother contends that the deduction of Olympic advertising expenses in the USP calculations for the 1982–83, 1983–84, and 1984–85 periods is an abrupt reversal of the policy announced in the *Final Results of Administration Review of Portable Electric Typewriters from Japan* for the 1981–82 period (52 FR 1504, January 14, 1987). The Department is attempting to distinguish Brother's Olympic advertisement from the above-cited cases because Brother International Corporation ("BIC") sells PETs through both its office equipment division ("OED") and consumer products division ("CPD"). This does not justify deviation from the policy established in these cases, and the Department has neglected to explain the deviation. Furthermore, Brother contends the Department's allocation methodology is flawed.

Department's Position: We agree with Brother and have revised our position. Consistent with the final results in the review covering 1981–82 sales of PETs, we have not made a deduction from USP for Brother's sponsorship of the 1984 games. We disregard advertising expenses when such expenses are incurred exclusively for models outside the scope of the order. In the previous review, we determined that Brother's 1984 Olympic advertising campaign was devoted exclusively to Brother's EM-series office machines. SCM has not submitted convincing evidence that Brother's PET models directly benefited from the Olympic advertisements. Furthermore, it would be inappropriate to allocated some of these expenses, which have been determined to be attributable to Brother's office typewriters, to PET models simply because they are sold through OEDs. We consider the advertising to be related to particular products, not to a particular channel of distribution.

Comment 2: SCM argues that Olympic advertising expenses should be deducted from the U.S. sales price of all models sold through OEDs, rather than from only the sales price of the seven models noted in the Department's preliminary results analysis memorandum.

Department's Position: For these final results, we make no adjustment for Olympic advertising expenses. (See our response to Comment 1.)

Comment 3: SCM argues that the expenses for financing a trip to the 1984 Olympics for Brother's "National Accounts" customers should be specifically and solely allocated to purchase price sales.

Brother maintains that the term "National Accounts" has no relationship to BIC's PET purchase price sales but rather refers to customers who are serviced directly by Brother Industries Ltd. ("BIL") headquarters.

Department's Position: SCM has submitted no evidence that "National Accounts" expenses are related to U.S. sales. Therefore, we have made no change in our calculation.

Comment 4: SCM argues that advertising expenses for the 1988 Olympics should be deducted from the U.S. sales price of all models during the 1985–86 review period, based on the best information available. Brother

incurred expenses for its sponsorship of the 1984 Olympic games as early as January 1981; therefore, it is likely that Olympic advertising expenses for the 1988 games were incurred prior to the end of the 1985–86 review period.

Brother asserts that neither BIC nor BIL incurred any Olympic advertising expenses during the 1985–86 review period. It states that the sponsorship agreement for the 1988 Olympic games was not signed until March 31, 1987, and SCM's reliance on what happened with respect to the 1984 Olympics is irrelevant to Brother's experience with the 1988 Olympics.

Department's Position: We agree with Brother and have not made a deduction from USP in the 1985–86 review period for Brother's sponsorship of the 1988 Olympic games. The advertising expenses for this campaign will be considered in administrative reviews for subsequent periods. We are satisfied that Brother did not begin incurring the expenses until after the close of the period under review.

Comment 5: SCM argues that Brother's export sales division expenses incurred in Japan should be deducted from exporter's sales price ("ESP").

Department's Position: For the final results we have allocated the selling, general, and administrative ("SG&A") expenses incurred by Brother International Corporation/Japan ("BIC/Japan"), BIL's related company which handles export sales, over total sales made through BIC/Japan, and made the appropriate deduction from ESP.

Comment 6: SCM argues that Brother's credit costs should be computed by customer and by period, due to extended credit terms offered during promotional periods. It maintains that the use of average credit periods distorts the calculation of ESP.

Brother argues that it would be impossible to report transaction-specific payment periods because payments are not linked to sales of specific products, but rather to invoices, and payments would have to be traced to the large number of invoices issued. Moreover, the Department has permitted averaging of credit expenses in the past in this and other cases.

Department's Position: We have determined, as in the prior review, that the use of averaged collection periods is reasonable.

Comment 7: SCM argues that the imputed inventory carrying cost referred to by SCM as imputed credit costs, was incorrectly based on the BIL/BIC transfer prices, and that these prices are not reliable. SCM suggests that the Department recompute this cost using net U.S. selling prices rather than the transfer prices.

Brother asserts that the transfer prices are the correct basis for computing inventory carrying costs because they reflect the cost to BIC of holding the merchandise in inventory prior to the U.S. sales. Also, the use of transfer prices is consistent with post practice.

Department's Position: The F.O.B. prices charged by the parent company of its U.S. subsidiary are an accurate basis upon which to calculate the cost of holding inventory prior to the sale to an unrelated U.S. customer. The transfer prices best reflect the cost of the merchandise as it is entered into inventory. The selling price from BIC to the unrelated purchase reflects selling costs incurred by BIC as well as BIC's profit. BIL does not extend credit for these purposes; therefore, it would be inappropriate to impute to BIL an interest expense for these additional costs and profit. The use of transfer prices in computing this expense is consistent with Department practice. *See Television Receivers, Monochrome and Color, from Japan* (53 FR 4050, February 11, 1988).

Comment 8: SCM argues that the SG&A expenses incurred by Brother's OED should be allocated to those EPT models sold through the OED and deducted from ESP.

Department's Position: As in the preliminary results, we continue to make a deduction from ESP for the SG&A expenses incurred by Brother's OED from sales made through that division. A portion of the expenses incurred by this division are attributable to certain PET models, and Brother has appropriately included the expenses in BIC's corporate overhead claim.

Comment 9: SCM argues that the cost of freight insurance associated with Brother's U.S. sales is a direct selling expense. It is directly related to the sales of PETs, and should not be treated as an indirect expense.

Department's Position: Freight insurance expenses incurred in transporting PETs from the Japanese port to BIC's warehouse have been deducted properly as a movement expense, and have not been treated as an indirect selling expense. The expense to which SCM refers is a blanket policy for marine and property insurance for all products and is not directly related to the PET sales under consideration. It has been properly categorized as an indirect expense.

Comment 10: SCM suggests that the Department ensure that the adjustment for warranty costs in the home market is based solely on repair expenses incurred in servicing warranty claims. SCM notes that in the review of the 1980–81 period, the Department made an adjustment to BIC's claimed warranty expense for revenues generated from non-warranty work.

Department's Position: Based on our verification of Brother's response for the 1985–86 period, we are satisfied that the home market warranty expenses were based on repair expenses incurred on claims made under warranty.

Comment 11: SCM agrees with the Department's preliminary decision to reject Brother's U.S. sales data for purchase price sales of three models for the 1984–85 review period because the data were not submitted in a timely fashion. Moreover, SCM claims that, because the Department did not verify Brother's responses for the 1983–84 and 1984–85 review periods, the late submission of data on additional sales raises questions as to the completenes of those responses. Therefore, the highest rate found for any review period should be used as the best information available for both of these review periods.

Brother disagrees with the Department's application of the highest margin found on a sale during the 1984–85 review period to the purchase price sales inadvertently omitted from its original response for that period. Brother, which itself discovered the omission and voluntarily submitted the missing information, argues that such application is a disincentive for an importer to voluntarily correct errors. Brother suggests that the Department either properly analyze these sales, assign to them the margin found to exist on ESP sales of these models, or assign them the highest weighted-average margin determined to exist for a responding firm during the review period.

Department's Position: Although the Department does have discretion to use in unusual situations, information untimely submitted, respondents making untimely submissions run a high risk that the Department will use the best information otherwise available to calculate dumping margins. Absent this approach, respondents would have no incentive to make timely submissions. In this case, time constraints alone are sufficient to prevent us from using Brother's late-submitted sales data.

We disagree with SCM's position that the new data calls into question the reliability of Brother's submissions for the unverified periods, since the information was voluntarily submitted We continue to use the best information otherwise available only for the sales in question, and not for all sales for the

1983–84 and 1984–85 periods. Furthermore, we agree with Brother that the margin applied to these sales in the preliminary results could serve as a disincentive for respondents otherwise willing to volunteer information inadvertently omitted from the original response. For the final results, we have applied the highest weighted-average margin found to exist for a responding firm during the 1984–85 review period to Brother's late-submitted purchase price sales.

Comment 12: SCM argues that Brother's home market sales of the Electra-50 were below cost during the 1985–86 review period. Earlier in this proceeding, SCM submitted its estimate of the cost of producing the Electra-50, compared this to Brother's home market prices for this model, and concluded that Brother had made sales of this model at prices below the cost of production. To counter SCM's allegation, Brother voluntarily submitted cost of production information for the Electra-50. SCM argues that, absent verification, the Department cannot rely upon Brother's submitted production costs, and must use constructed value, based on costs submitted by SCM, as the basis for FMV.

Department's Position: We see no justification for rejecting Brother's production cost data based on SCM's contention that it was not verified. Brother submitted cost information to support its difference in merchandise adjustment claims, and this information was subject to verification. Although certain cost of production information was not submitted until after SCM's post-verification allegation of sales below cost, the information was not so substantial that a new verification was warranted. The Department has discretion, in accordance with section 618 of the Trade and Tariff Act of 1984 ("the 1984 Act"), to determine when submitted information should be subject to verification, and when information submitted subsequent to verification should be verified. *See Cyanuric Acid and Its Chlorinated Derivatives from Japan* (51 FR 45495, December 19, 1986). Furthermore, SCM's cost allegations with respect to Brother's 1985–86 home market sales were untimely and its request for verification of data at this point in the proceeding is inappropriate and inconsistent with sound administative practices. *See Color Television Receivers from Japan* (49 FR 7620, March 1, 1984).

Comment 13: SCM argues that the Department neglected to collect all home market sales data concerning electronic typewriters incorporating calculators, text memory, or Japanese language capability, which may potentially be "such or similar" to the models sold to the United States.

Department's Position: We are satisified that all home market sales of merchandise "such or similar" to the merchandise sold in the United States have been reported. The Department determines what constitutes such or similar merchandise for comparison purposes, taking into consideration information on the record. Based on that information, we did not require Brother to provide data on models deemd outside of the scope of the order. It is inappropriate to require respondents to submit data on sales of merchandise outside of the scope when there are adequate sales of more comparable models within the scope of the order. Models with calculators and text memory, even if within the scope, are less similar than the reported home market models to the U.S. models subject to this review, and would not have been used in determining FMV.

Comment 14: SCM argues that all of Brother's claimed adjustments for home market promotional expenses should be denied because Brother failed to establish that the promotions were directed to the ultimate consumers.

Department's Position: Brother adequately demonstrated in its response and at verification that the promotional activities were directed to end-users.

Comment 15: SCM argues that, assuming Brother's home market advertising expenses are directly related to sales of PETs, its failure to separately tie promotional expenses to particular models of typewriters requires the Department to reject the adjustment claim, or, at a minimum, permit the adjustment only as an offset to U.S. indirect selling expenses.

Department's Position: We are satisfied with Brother's allocation of its promotional expense amount. The Department does not require respondents to tie promotional expenses to sales of specific models as a condition of considering such expenses direct selling expenses. See *Color Television Receivers from Korea* (49 FR 50420, December 28, 1984).

Comment 16: SCM argues that, as a more precise allocation, multi-product advertisement expenses should be based on the relative "value of sales of each relevant PET model," as approved by the Court in *Brother Industries Ltd. v. United States,* 3 CIT 125, 152 540 F. Supp. 1341, 1365 (1982), rather than on the basis of sales value, as noted in the verification report.

Department's Position: The sales value by which we allocated multi-product advertising expenses is, in fact, the value of sales of each relevant PET model.

Comment 17: SCM argues that home market warrantly expense should not be allocated across all models or product lines but must be identified with particular PET models. If this cannot be done, then the expenses should be treated as indirect expenses subject to the ESP cap. Furthermore, SCM asserts that only parts costs should be included in the adjustment for warranty expenses because repairmen's salaries and overhead are not directly related to the sales and should be excluded from the adjustment.

Department's Position: Brother's warranty expense deduction is based solely on variable costs for repairs to PETs, and therefore is directly related to sales. We did not require Brother to report model-specific warranty expenses. Therefore, we have continued to allow Brother's warranty expense claim for the final results.

Comment 18: SCM argues that Brother's export division expenses must be removed from the pool of home market indirect selling expenses. To the extent that these cannot be segregated from the total indirect selling expense amount claimed by Brother, the entire home market indirect selling expense adjustment should be denied.

Department's Position: As in the preliminary results, we have not made a deduction from FMV for these expenses.

Comment 19: SCM argues that, because Brother did not identify the cost of the U.S. promotional trips included in the reported corporate advertising expense incurred in Japan, no corporate advertising expenses may be included in the ESP offset. Additionally, it contends the expenses must be deducted from USP.

Brother argues that the costs for incentive trips have been paid by its U.S. subsidiary BIC, are recorded in BIC's accounting records, and have been reported in the questionnaire responses.

Department's Position: We are satisfied that the expenses for these trips are included in BIC's reported corporate overhead expense amounts and have been deducted from USP.

Comment 20: SCM argues that, based on its own calculation of the production costs of the model S–15, Canon's home market sales of the S–15 were made below the cost of production. SCM estimated a constructed value figure for the S–15 based on cost of manufacture data submitted by Canon for the S–15 and from information provided for

another model. Based on that estimated, SCM maintains that a significant volume of these sales were made below cost. Thus, as the basis for foreign market value, the Department should rely on the constructed value of this model for all sales made below the constructed value estimated by SCM.

Canon argues that SCM's cost of production figure is inaccurate because it double counts the variable costs and depreciation expenses included in the fixed factory overhead.

Department's Position: We have rejected SCM's allegation of below-cost sales of the model S–15 in the home market because it was untimely. SCM had access to Canon's cost information, on which it based its allegation, for almost one year before raising the issue. A petitioner is obligated to make sales below cost allegations "at the earliest possible time during the course of a review in order to avoid unduly delaying the review." *See certain Welded Carbon Steel Pipes and Tubes from Korea* (52 FR 33460, September 3, 1987). In addition, SCM's allegation was presented after verification of the Canon response. SCM's pre-verification comments, dated January 13, 1987, did not mention Canon's cost.

Even had the allegations been timely submitted, SCM's calculation of Canon's cost is flawed. We confirmed at verification that Canon's in-house processing is included in its variable costs and depreciation is included in the reported fixed factory overhead. In addition, we verified portions of production cost information for Canon models S–15 and S–55 and are satisfied with the submitted figures. Finally, SCM's claim that a "significant volume" of these sales were made below SCM's cost of production calculation is not substantiated by the evidence on the record. Our review of the sales data indicates that the selling prices for a very insignificant number of S–15 sales fell below even SCM's submitted cost figure.

Comment 21: SCM contends that the Department should compare Canon's sales to both related and unrelated dealers to determine whether the sales to related firms are arm's-length transactions which may be included in the calculation of FMV.

Canon asserts that only a small percentage of home market sales were made to related dealers and that the prices charged were within the range of prices charged to unrelated large dealers; therefore, there is no justisfication for excluding the related party transactions from the calulation of foreign marl:et value.

Department's Position: We have made the comparison suggested by SCM, and, as a result, we have excluded sales to related parties from the calculation of FMV for these final results. We found that the selling prices to Canon's related customers were consistently lower than those to its unrelated customers, and therefore we are not satisfied that these sales were arm's-length transactions.

Comment 22: SCM argues that Canon's method of adjusting the sales database to account for negative invoices is unreliable and distorts the prices of reported sales. It argues that Canon's attempt to "match' the negative and positive invoices on a first in-first out ("FIFO") basis is flawed and that the database is unverifiable. Therefore, the foreign market value should be based on the original prices quoted, without an adjustment for negative invoices.

Canon asserts that because the information necessary to match negative and positive invoices was not computerized, it developed a computer methodology based on a FIFO system. Furthermore, Canon maintains that this methodology was approved in discussions with Department personnel and was subject to extensive verification by the Department.

Department's Position: Contrary to SCM's assertion that the total quantity and value of Canon's reported sales could not be verified because of the negative invoices, the Department was able to verify the accuracy of the net sales results. The verifier noted that, although corresponding sales and invoices were not chosen on the basis of identical matches, "there was no effect for the purpose of reporting complete and accurate sales information." Canon's computerized matching system was discussed with Department staff prior to the submission of the questionnaire response, and verification confirmed that the system resulted in accurately reported sales prices and quantities. In its comments, SCM refers to the total quantity and sales value reported by Canon and the "discrepancy" noted in the verification report. However, further reading of the report indicates that the "variance in question was resolved" and that Canon reported both the total quantity and value of initial sales, total quantity and value of negative-invoiced units, and total final quantity and value of units sold. Given the results of the verification, there is no justification for rejecting Canon's database as unreliable.

Comment 23: SCM argues that Canon's home market sales listing is incomplete because it excludes sales of Japanese-language PETs and PETs incorporating calculators or text memory functions.

Canon maintains that it included in its response a listing of all PETs sold in the home market and the United States, as well as specification sheets and brochures for all PET models. In accordance with the final results of the Department's most recent review in this case (52 FR 1504, January 14, 1987), in which the Department determined that typewriters incorporating calculators or text memory functions were not covered by the scope of the antidumping order, this review was limited to four typewriter models sold to the United States. Canon maintains the Department had all of the information necessary to determine which home market sales models were most appropriate for comparison purposes, and the selections should not be revised for the final results. Canon states that it does not produce "Japanese-language portable electric typewriters" and that the two models to which SCM refers, the CM–3 and CM–5, are Japanese word processors not subject to this review.

Department's Position: We agree with Canon and note that the Department decided, based on information provided by Canon at the outset of this proceeding, which home market models would be appropriately compared to the U.S. models. Since Canon had adequate sales of comparable models that fall within the scope of the order, it was not necessary to look to merchandise outside the scope for comparisons.

Comment 24: SCM argues that repair expenses incurred on merchandise not under warranty cannot be allocated to home market sales or deducted from FMV.

Department's Position: Based on the results of verification of Canon records for the review period, we are satisfied that the warranty expense reported did not include expenses for warranty-expired PETs or for anyother products.

Comment 24: SCM argues that Canon's verified home market warranty costs should be allocated over all Japanese sales rather than just the Tokyo Division sales. Typewriters sold by any of Canon's divisions could have been repaired by Canon dealers in any part of Japan, and those dealers could have submitted the warranty claims to the Tokyo Division.

Canon maintains that is warranty claim was verified and that there is no evidence suggesting that PETs not sold by the Tokyo division were serviced by that division. The Tokyo Division warranty expenses are incurred as a result of services performed by this division for PETs sold by this division.

Department's Position: The figures reported by Canon were verified, and SCM has presented no evidence to substantiate its claim.

Comment 26: SCM argues that Canon's claimed advertising expenses for brochures/flyers, posters, price lists, trade shows, and golf tournament sponsorship cannot be directly attributed to home market resales of PETs by Canon's customers. Therefore, the Department should disallow the claimed advertising expenses adjustment. It contends that brochures, posters, and price lists are commonly distributed by a manufacturer to its own customers, particularly in a situation in which the manufacturer has recently entered the typewriter market.

SCM further contends that Canon failed to establish that the products displayed and advertised for its sponsorship ot the golf tournament included typewriters, much less the particular models subject to this review proceeding.

Department's Position: Certain of Canon's advertisements, including such items as brochures, and newspaper, magazine and catalogue advertisements, were directed to Canon's customers' customers, and were related to the PET models under review. Therefore, an adjustment for direct selling expenses was appropriately made. Expenses incurred for trade shows, billboards, and sponsorship of a golf tournament, which were allocated on the basis of relative sales value, were for corporate/institutional advertising; therefore, we treated them as indirect selling expenses.

We verified Canon's advertising expenses. Canon does not account for its advertising expenses on a model-by-model basis. Canon had all advertising vouchers and 90 percent of all original advertisements available for the Department's inspection. The results of Canon's vertification confirm that reported claims were accurate.

Comment 27: SCM argues that, on the basis of verification, the promotional expenses incurred by Canon which consisted of "assistance money" to certain dealers with excess inventory and to part-time hires for sales on college campuses, and "recruitment expenses" for the part-time hires, do not qualify as direct selling expenses. Even if the expenses were incurred on Canon's customers' behalf, they must also be directly related to sales of PETs; otherwise the adjustment should be denied.

Canon states that the funds were used to finance sales expansion campaigns designed to increase the dealers' sales to end-users and were paid pursuant to contractual arrangements designed to promote the sale of specific typewriter models. A circumstance-of-sale adjustment should be made for these expenses.

Department's Position: Section 353.15(b) of the Commerce Regulations provides, as an example of an allowable direct expense, assumption of a purchaser's selling costs. Payment of the purchaser's sales personnel is such an assumption. We do not interpret this allowance as limited to only an assumption of the direct selling expenses. Therefore, we allowed for these payments as a circumstance-of-sale adjustment.

Comment 28: SCM argues that the after-sale rebates and discounts reported by Canon cannot be relied upon because Canon routinely deviated from the terms of the sale contracts. Therefore, the rebates and discounts cannot be directly related to the sales under consideration and should be rejected as direct adjustments to FMV. At most, these claims should be treated as indirect expenses.

Department's Position: We examined Canon's rebate contracts at verification and determined that the rebates were known at the time of sale and were contingent upon the sales of particular models; therefore, these rebates were tied to the sales under consideration. Canon resubmitted data concerning rebates on a sale-by-sale basis in accordance with the Department's request. We are satisfied that Canon's revised rebate submission was an accurate reflection of actual rebates paid and have allowed the deduction. The terms of the discounts were also examined at verification and no discrepancies were found. Therefore, we made deductions from FMV for both discounts and rebates.

Comment 29: SCM claims that the difference in merchandise adjustment for one Canon comparison model, the S–15, was not fully verified. In particular, the Department did not examine the actual costs of Canon's subsidiary in manufacturing the model S–15, nor did it compare prices paid by Canon to unrelated suppliers for assembly with transfer prices paid to the subsidiary. Absent such verification, the difference-in-merchandise adjustment must be based on the best information otherwise available.

Department's Position: We agree with Canon and are satisfied that Canon reported actual production costs for the major components and that the verified labor and overhead costs for the model S–15 were accurate. Source documents from Canon's related subsidiary responsible for the main assembly of the S–15 were examined and no discrepancies were discovered in the reported amounts. We confirmed that all parts for both the S–15 and S–55 were purchased from unrelated companies.

Comment 30: SCM argues that all of Canon's U.S. export-related expenses incurred in Japan must be stripped out of the home market selling expenses and deducted from ESP. It maintains that the cost of advertising materials, hosting of the "Tokyo Seminars," and the "computerized parts warehouses" are attributable to export sales and should be deducted from USP rather than allocated to home market sales.

Department's Position: Cost incurred for the brochure and price lists printed in Japan were deducted as direct selling expenses from the U.S. sales price and there is nothing to indicate that these expenses have also been deducted from FMV. Canon properly included expenses incurred for hosting seminars in its corporate overhead claim. Furthermore, Canon did not include the cost of providing warranty parts for export sales in the home market warranty expenses.

Comment 31: SCM argues that Canon's method of matching negative and positive invoices for its U.S. sales is unreliable. In cases of price protection, the Department should consider the lower price reported to be the correct one for use in the calculation of USP. (Price protection is a practice by which a manufacturer/seller reimburses it customer for the revenues lost by the latter due to a decrease in the price list price of merchandise in the customer's inventory at the time of the price list change.)

Department's Position: The method Canon used in applying negative to positive invoices is reasonable. We verified that the methodology was correctly applied. See our response to Comment 22 concerning negative invoices in the home market.

Comment 32: SCM argues that Canon's allocation of U.S. warranty and technical expenses is improper because it is based on the number of repairs of typewriters relative to the number of all repairs made by the Calculator Service Department. The Department should allocate the entire amount of warranty and technical service expenses only over U.S. typewriter sales, not over all sales of the Calculator Service Department.

Department's Position: We found at verification that the unit repair expenses for other products in the Calculator Service Department were approximately the same as the unit costs reported for PETs. We are satisfied that the figures

submitted are a reasonable reflection of actual repair costs incurred by Canon on sales of its PETs.

Comment 33: SCM argues that, due to the inaccuracies in Canon's categorization of U.S. advertising expenses, the Department should treat all such expenses as direct selling expenses.

Department's Position: At verification Canon was asked to resubmit its information concerning promotional materials and advertising expenses. This was necessary due to the miscategorization of these items in its original reponse. As stated in the verification report, the actual amounts were verified. However, the individual expense items were miscategorized. Canon provided supporting documentation for its claim. We are satisfied that all information is now accurate and have made the adjustments accordingly.

Comment 34: SCM argues that Nakajima's production cost data should be rejected for each of the review periods for the following reasons: (1) Nakajima cost data for the already completed 1981–82 review failed verification; (2) verification is virtually impossible given Nakajima's lack of a valid cost accounting system; and (3) the 1985–86 verification was flawed in various respects.

Department's Position: SCM's assertion that we should reject Nakajima's cost information for this review based on verification results of a previous review is not justified. Each review proceeding and administrative record stands independently from that of prior reviews. We are satisfied with the results of the cost of production verification for the 1985–86 review period. Nakajima's performance in prior verifications is not relevant in view of verification of the current period.

Comment 35: SCM argues that Nakajima's cost calculation methodology was not valid because Nakajima did not develop costs from the logs of machine time, or allocate overhead or depreciation on the basis of machine time. Therefore, the Department's verification of work-in-process and fabrication costs was flawed.

Department's Position: We are satisfied with Nakajima's calculation of fabrication costs. Nakajima's allocation of overhead was appropriately based on direct labor cost. The development and allocation of Nakajima's fabrication costs were traced to source documents and verified as accurate.

Comment 36: SCM argues that, because the Department failed to seek time-and-motion studies from Nakajima, it has no means to independently test the accuracy of Nakajima's labor cost.

Department's Position: The Department did not require Nakajima to submit these studies because, as stated in the verification report, we examined actual labor costs. Time and motion studies are relevant only to standard times and costs, which we did not use.

Comment 37: SCM argues that the Department's verification of direct labor hours was further flawed because: (1) The Department failed to verify the composition of work groups that Nakajima assigned to direct labor pools; (2) the allocation of overhead to product line on the basis of direct labor cost does not produce a model-specific cost of production; and (3) Nakajima omitted payroll taxes and overtime from its direct labor cost.

Department's Position: We disagree. We did, in fact, examine the composition of work groups at verification. The allocation of factory overhead by product line was reasonable for Nakajima All Precision Co., Ltd. ("Precision") and Nakajima All Denshi Industrial Co. ("Denshi"), the only two members of the Nakajima group for which such allocation was done, because the operations performed by Precision and Denshi vary little among models. Finally, payroll taxes and overtime were included in Nakajima's reported direct labor costs.

Comment 38: SCM argues that Nakajima's factory overhead expenses and depreciation, both of which are allocated to product lines on the basis of direct labor costs, are unreliable. SCM maintains that (1) pooling of depreciation expenses across product lines is inappropriate because of varying capacity utilization rates and useful lives, and (2) allocation of depreciation should be based on machine hours.

Department's Position: We are satisfied that Nakajima's allocation methodology for both factory overhead and depreciation as verified is reasonable.

Comment 39: SCM argues that the Department's reliance upon the consolidated financial statement for companies within the Nakajima group, which reported cost of production rather than transfer prices tested against arm's length market prices, may understate the cost Nakajima incurred in purchasing parts and processing services.

Department's Position: We disagree. Because profit withn the Nakajima group is not an issue in calculating cost of production, we consider use of the actual costs incurred by related suppliers or subcontractors to be appropriate. *See Red Raspberries from Canada* (53 FR 20150, June 2, 1988).

Comment 40: SCM argues that Nakajima understated its cost of production by consolidating subcontractors' SG&A with its own SG&A, rather than treating those subcontractor expenses as Nakajima's material, labor, or factory overhead. Furthermore, since Nakajima has an incentive to misallocate expenses to achieve the statutory minimum, absent verification of subcontractors' costs, the Department cannot assume correct reporting and allocation.

In addition, Nakajima included indirect labor in its reported SG&A expenses, and may have also included depreciation on machinery and equipment used in the manufacture of PETs.

Department's Position: We disagree. The verification report shows that there was an extensive examination of the line items that comprised SG&A. Costs incurred were tied to the questionnaire response through a consolidated financial statement which took into account the cost of materials and services as they were initially incurred by each of Nakajima's related subcontractors. Each line item expense was extracted from source documents of each of Nakajima's related subcontractors. Worksheets were provided and sample transactions from each subcontractor's general ledger were examined. We concluded that Nakajima properly classified and took into account the SG&A expenses of each member of the Nakajima group.

Comment 41: SCM argues that Nakajima's use of the last transaction value of the month, rather than a monthly weighted-average, to value inventory, is distortive. Therefore, the Department should use, as the best information available for parts cost, the highest single value found for each part.

Department's Position: The Department verified that end-of-month inventory valuations accurately represented the value of inventory during the month. Nakajima uses end-of-month inventory valuation in its normal record-keeping, in accordance with Japanese generally accepted accounting principles ("GAAP"). Therefore, we accept the parts cost reported by Nakajima.

Comment 42: SCM argues that Nakajima's scrap loss was not reported in its accounting system.

Department's Position: We verified that the costs due to scrap loss were added to the material costs reported by Nakajima.

Comment 43: SCM argues that scrap costs were not accounted for in subcontractors' invoice prices to

Precision. Because Nakajima's consolidated financial statement took into account only the costs of inputs purchased from related parties, the cost of waste, scrap, and defective parts that would have been captured in the transfer prices from related subcontractors to Precision were eliminated from Nakajima's calculated cost of production.

Department's Position: Nakajima fully accounted for subcontractor scrap loss. The verified loss-ratio figure took into consideration the loss of parts transferred to subcontractors for assembly.

Comment 44: SCM notes an apparent inconsistency between Nakajima's response and the verification report with respect to transportation costs between related subcontractors for materials transportation. SCM contends that these transportation costs should be included in material costs. Because it appears that such costs have not been attributed to materials costs, the Department should use the best information available to value materials.

Department's Position: There is no inconsistency between the response and verification report with respect to this issue. The section in the verification report that SCM cites refers to materials purchased from related subcontractors, while the response refers to purchases from unrelated parties. Nakajima's categorization of the costs of salaried drivers and of vehicles for such transportation as overhead expenses was reasonable.

Comment 45: SCM argues that Nakajima made unwarranted deductions from its reported SG&A for export selling expenses and the SG&A of Precision.

Department's Position: This expense item was verified. The expenses related to Nakajima's export sales have been properly allocated to SG&A.

Comment 46: SCM argues that Nakajima failed to allocate corporate R&D and R&D incurred by subdivisions to the product under investigation.

Department's Position: We disagree. Nakajima's R&D expenses incurred for the products under review were included in the manufacturing overhead costs of these products and those associated with future products were appropriately classified as general R&D and included in SG&A expenses. This is supported by the verfication report which indicates that actual costs were reflected in the financial statement and allocated to electric typewriters and printers. The methodology used to account for these costs is fully explained in the report and is consistent with both U.S. and Japanese Generally Accepted Accounting Principles.

Comment 47: SCM argues that Nakajima's cost data for the 1982–85 review periods be rejected as unreliable because it was not verified.

Department's Position: We disagree. SCM requested verification of Nakajima's submitted information for only the 1985–86 review period based on the understanding that if problems were found for this period the Department would then verify data from the earlier review periods as well. The Department is satisfied with the results of the 1985–86 period verification. There is no basis for rejecting Nakajima's submitted data and using the best information available for the 1982–85 review periods.

Comment 48: SCM contends that Silver's data of sale in the United States is unreliable because the Department found at verification that, in many instances, the payment amounts did not correspond to the invoices, and only through the tracing of off-invoice discounts could Silver reconcile payment amounts to invoices and substantiate the accuracy of the sale prices reported. Therefore, the Department should, as the best information available, assume that price protection was granted on every U.S. sale.

Silver states that most of the "discrepancies" found in the reported sales data were instances in which the amounts received by Silver Reed America ("SRA") were greater than the amounts reported because separate checks were not received for each invoice, but a combined payment for several invoices were instead made.

Department's Position: We agree with Silver that in most instances in which the payment amounts differed from invoice amounts, payments were greater than invoice amounts. SCM's assertion that sale prices reported could only be confirmed through tracing of discounts is not supported by evidence on the record. On a few sales traced at verification, discounts were granted to Silver's customers. We verified the amounts of the discounts and confirmed that the actual prices paid were reported.

Comment 49: SCM argues that model-specific advertising expenses incurred with respect to U.S. sales may have been improperly treated as indirect expenses. It maintains that the advertisements classified as institutional should be examined to ensure they have been properly categorized as indirect, given SRA's incentive to understate direct U.S. selling costs.

Department's Position: At verification we examined samples of the advertisements claimed to be institutional, and confirmed that they were properly categorized as such.

Comment 50: SCM contends that the averaging of credit costs does not reasonably reflect Silver's costs associated with promotional period sales. It maintains that credit costs should be computed on a transactional or a seasonal basis, or at a minimum by customer.

Silver emphasizes that SRA does not maintain an ongoing record of each customer's accounts receivable payment profile and the burden of measuring the exact time period between shipment and payment for the thousands of individual payments would be unreasonable.

Department's Position: We agree with Silver. The reporting of credit expenses based on monthly accounts receivables adequately reflects experience during promotional periods. Reporting on a customer-by-customer basis, as petitioner suggests, would not take into account such seasonal fluctuations.

Comment 51: SCM argues that Silver's claim for deduct-from-invoice ("DFI") discounts submitted after verification cannot be relied upon. The Department should calculate the deduction based upon the highest DFI discounts given, as the best information available, and make deductions for all sales to each eligible dealer.

Department's Position: Silver originally erred in reporting, as direct deductions from U.S. price, deductions that were actually indirect, thereby understating the net USP. This error, which was to Silver's disadvantage, was revealed at verification. Due to the overstatement of direct selling expenses, we allowed Silver to resubmit its claim for this expense. The actual amounts were verified and Silver was required to submit all invoices for inspection. We have continued to make an adjustment for Silver's DFI discounts for the final results.

Comment 52: SCM argues that expenses incurred by SRA for its cash disbursement payments to customers should be treated as direct rather than indirect selling expenses, since of the two allegedly indirect advertisements examined at verification, one was found to be direct.

Department's Position: SCM is mistaken. We verified that Silver correctly classified portions of its cash disbursement payments as direct expenses and other portions as indirect expenses. For these final results, as for the preliminary results, we have treated

these expenses as direct or indirect, as appropriate.

Comment 53: SCM alleges that Silver did not identify any expenses for providing point-of-sale materials or other promotional programs for the U.S. market, and that these expenses must therefore have been improperly reported as indirect expenses. Consequently, the entire category of corporate advertising should be treated as a direct selling expense.

Department's Position: SCM provides no support specific to Silver for its contention that such expenses were incurred and were improperly reported. Furthermore, questions regarding the adequacy of a response should be raised prior to verification. In the interest of timeliness the Department will not investigate unsupported allegations regarding the accuracy of a response subsequent to verification.

Comment 54: SCM contends the Department should make a deduction for commissions paid by Silver in the United States to salaried salesmen because such commissions were directly releated to specific sales of the merchandise.

Department's Position: Silver reported, and the Department deducted from USP, all commissions for sales to the U.S.

Comment 55: SCM argues that technical service costs should be treated as direct selling expenses for newly introduced typewriter models, because it is likely that model-specific repair training was provided. Furthermore, based on the verification report, it appears that the indirect expenses were claimed on the basis of a line item listing of expenses by model. Therefore, a direct deduction should be made on a model-by-model basis. If model-specific data is not available, the technical service expense amount should be allocated to all typewriter sales and treated as a direct expense.

Department's Position: The line-item listing by model does not show itemized expense amounts incurred on a model-by-model basis, but rather indicates the total expense amounts allocated to each model. Petitioner's speculation regarding the likelihood of model-specific training is not a sufficient reason to reclassify the expenses as direct.

Comment 56: SCM argues that Silver's purchase price customers must have demanded, as a condition of sale, that Silver warehouse PETs in the United States. Such warehousing is directly related to specific sales of PETs and should be deducted from USP as a direct expense.

Department's Position: We agree with the petitioner that such an expense for post-sale warehousing would be taken as a direct deduction from the USP. However, we have no evidence that Silver incurred such expenses.

Comment 57: SCM argues that Silver's home market sales database cannot be relied upon because Silver could not account for the effect of negative invoices on individual sales. At a minimum, the negative line items should be dropped from the home market database.

Silver maintains that the negative invoices reported were returns of previous sales which have been properly disregarded from the calculations, and that all home market sales were reported.

Department's Position: As in the preliminary, we have disregarded all negative invoices in the final result calculations and are satisfied that these were issued as the result of returned mechandise.

Comment 58: SCM argues that Silver's home market database is incomplete because Silver did not report sales of Japanese-language PETs or PETs which incorporate calculators or text memory.

Department's Position: We are satisfied that Silver reported home market sales of all non-automatic PETs not incorporating a calculating mechanism, in accordance with the Department's request. Japanese language PETs or PETS which incorporate calculators or text memory would be less similar to the U.S. models being reviewed, and thus, even if reported, not used to determine FMV. See our discussion of the scope in the background section.

Comment 59: SCM argues that the Department should not allow an adjustment for rebates in the home market because they were neither shown to have been a condition of sale, nor proven to be directly related to the sales under consideration. At most, the adjustment should be permitted as an indirect selling expense.

Silver contends that the rebates paid to its customers were provided for in contracts which specify both the amounts of and the conditions for the rebates. Furthermore, in a previous review, rebates of this same type were determined to be directly related to the sales of the merchandise under investigation.

Department's Position: We agree with Silver and have continued to deduct rebates paid for the final results. Silver provided various agreements and supporting documents at verification indicating the rebates were known at the time of sale and applied to the sales under consideration.

Comment 60: SCM alleges that Silver's reported warranty costs are overstated because they include costs incurred for periods other than those subject to this review.

Department's Position: We agree with petitioner. Because the warranty expense amount incurred for the review period has not been separately quantified, we have denied this adjustment for these final results.

Comment 61: SCM states that it is not clear whether Silver's difference in merchandise adjustments include SG&A expenses; if so, they should be adjusted to reflect only variable manufacturing costs.

Department's Position: The difference in merchandise adjustment figures reflect only the variable manufacturing costs and do not include SG&A expenses.

Comment 62: SCM argues that, consistent with past agency practice and the method employed for other respondents in this review proceeding, the Department should deduct from Silver's total home market freight expense the pre-sale costs of freight from the factory to distribution centers.

Department's Position: We agree with petitioner and have accordingly reduced the deduction.

Comment 63: SCM argues that Silver improperly included headquarters' SG&A expenses in its indirect selling expense claim, because it is the Department's practice to allow an adjustment for indirect expenses only when indirect expenses are incurred by a sales subsidiary.

Department's Position: Silver Business Machine is responsible for the marketing of PETs in the home market. The expense item was properly allocated from Silver Business Machine ("SBM") to total sales of PETs, based o the ratio of the number of employees in SBM to the number of employees in the headquarters operation. As a general rule we do not allow allocation of headquarters' SG&A to home market indirect selling expenses unless the respondent can demonstrate actual expenses incurred by the selling operation. *See Television Receivers, Monochrome and Color, from Korea* (49 FR 50420, December 28, 1984). We are satisfied that Silver adequately demonstrated the actual expenses incurred by SBM and we have made the appropriate allocation.

Comment 64: SCM argues that Silver overstated its indirect selling expenses in the home market by failing to deduct credit costs associated with export sales from the pool of home market indirect expenses.

Department's Position: We disagree. Credit costs associated with U.S. export sales were not included in the indirect selling expenses in the home market.

Comment 65: SCM notes that the Department properly declined to make a direct selling expense deduction from FMV for home market technical service expenses, as Silver failed to demonstrate that they were directly related to the sales under consideration. However, the Department should ensure that these expenses have not been improperly categorized as indirect selling expenses.

Department's Position: There is no evidence to indicate that technical service expenses have been improperly included in Silver's indirect selling expense claims.

Comment 66: SCM argues that unless Silver's Business Machine Division is involved in the marketing of PETs, expenses, incurred by this division should be excluded from the amount of indirect selling expenses in the home market.

Department's Position: Silver's Business Machine Division is involved in the marketing of PETs and, therefore, a portion of expenses incurred by this division are attributable to sales of PETs.

Comment 67: SCM contends the Department neglected to investigate whether Juki granted seasonal price reductions for its U.S. sales similar to the price protections offered by other respondents.

Department's Position: We are satisfied with Juki's contention that no such rebates were paid to its customers, and SCM has not submitted evidence to the contrary with regard to Juki. There is no justification for simply assuming such a program existed.

Comment 68: SCM agrees that Juki's U.S. selling expenses were properly deducted as direct selling expenses from ESP. However, it states that information in the record is insufficient to determine if the amount included warranty and technical service expenses, and how these were allocated among different products.

Juki confirms that warranty and technical service expenses were included in the U.S. selling expenses as reported, and a detailed explanation with worksheets was provided to demonstrate that they were properly allocated among the different product groups sold by Juki Office Machine Corporation.

Department's Position: We have continued to deduct Juki's U.S. selling expenses as a direct expense from ESP for the final results, and are satisfied with Juki's explanation and worksheets, submitted in March 1987, detailing the allocation methodology.

Comment 69: SCM states that the Department should ensure that Juki's U.S. co-op advertising expenses are not commingled with indirect expenses. Furthermore, since Juki claimed it was unable to identify co-op advertising on a customer-specific basis, and because Juki was known to have incurred co-op advertising expenses in the amount of three percent of the selling price, the Department should deduct three percent from all sales for co-op advertising as a direct selling expense, and make the necessary adjustments to the direct and indirect selling expense totals for the co-op advertising expenses.

Department's Position: We are satisfied that the advertising expenses have been properly reported for the 1985–86 period.

Comment 70: SCM argues that the Department should make a deduction from Juki's USP for promotional trips as a direct selling expense.

Department's Position: We disagree. SCM provided no evidence that Juki incurred promotional trip expenses during the review period.

Comment 71: SCM questions Juki's assertion that typewriters are shipped immediately upon sale, and argues that the cost of warehousing in the United States should be based on the warehousing period used for the imputed credit cost calculation. The warehousing cost should be deducted from each U.S. sale as an indirect selling expense.

Juki maintains that the Department deducted from each U.S. sale an imputed amount for interest expenses, including the warehousing period expenses, as an indirect selling expense.

Department's Position: We have continued to make the appropriate deduction for the imputed interest expenses incurred by Juki for the warehousing period as an indirect expense for the final results.

Comment 72: SCM argues that the highest monthly interest rate, rather than the average of monthly rates incurred during the review period, should be used to calculate U.S. credit expenses. A simple average does not provide the necessary level of detail to insure that U.S. credit expenses have not been understated. Furthermore, based on information that SCM submitted, Juki offered terms as long as ninety days or a seven percent discount. Absent evidence to support Juki's "actual" credit period, SCM proposes that the Department assume seven percent discounts were granted on all sales of Juki's PETs.

Department's Position: We consider the twelve-month average used for the preliminary calculations reasonable because it is representative of the monthly rates for the period. We used the actual terms of payment for each sale, and have continued to make a deduction for early payment discounts actually incurred. There is no reason to assume discounts were granted beyond the terms of each of the sales in question. Further, we note that information regarding terms and discounts provided by SCM is from outside the review period.

Comment 73: SCM argues that Juki's submitted cost data is unreliable because the allocation of variances for labor and materials is based on production quantities and the allocation of corporate SG&A is done on the basis of number of employees. It further argues that various plant-level expenses were improperly classified as SG&A expenses rather than factory overhead. Finally, general R&D expenses should be included in the cost of production and allocated to factory overhead and SG&A.

Juki argues that the production cost data was supported by worksheets, and the allocation methods were the same as those submitted in responses for earlier reviews which were verified as accurate. It maintains the corporate SG&A expenses, allocated on the basis of number of employees at the General Affairs Division, is reasonable and in accordance with GAAP. Juki states that no factory overhead expenses were improperly classified as SG&A and the data submitted includes product-specific and general R&D.

Department's Position: We consider Juki's allocation methodology reasonable and, as in the prior review, accept Juki's costs as submitted in accordance with that methodology.

Comment 74: SCM argues that, contrary to the Department's statement in the preliminary that Matsushita had no sales of merchandise within the scope of the order during the review period, three models of typewriters sold by Matsushita (the KX–E400, KX–E500, and KX–E500B) are included in the scope of the antidumping duty order. Since there is disagreement as to the application of the order to these models, the Department should suspend liquidation of these models and rule on Matsushita's exclusion request.

Matsushita asserts that these three models are office typewriters, and based on their physical characteristics are properly excluded from the scope of the order. It maintains that all three models are non-portable, not sold with a handle

or carrying case, and are more durable than the typical PET. Furthermore, it states that they are sold exclusively through OEDs, and are wider and deeper than the models included under the scope.

Department's Position: The Department will issue a determination, separate from these final results, as to whether the KX–E400, KX–E500, and KX–E500B are included in the scope of the antidumping duty order. If we determine that any of these models are included in the scope, we will separately review Panasonic's unliquidated entries of those models for the May 1, 1985 through April 30, 1986 period.

Comment 75: SMC argues that, contrary to the Department's March 18, 1988 revised scope determination submitted to the Court of International Trade, PETs with text memory capability of 2K or more ("automatic typewriters") are covered by the scope of the antidumping duty order.

Department's Position: The merchandise subject to this review is defined as non-automatic portable electric typewriters not incorporating a calculating mechanism, in accordance with the scope of the order as stated in the most recently published final results of administrative review. For a further discussion, see the background section.

Analysis of Respondents' Comments

Comment 76: Brother objects to the retroactive application of the section 615 changes of the 1984 Act to merchandise exported prior to October 30, 1984, the effective date of the 1984 Act. This provision changed the point in time at which FMV is calculated for ESP transactions. The Department's decision to apply the change retroactively caused certain of Brother's U.S. sales to lack comparison sales of such or similar merchandise in the home market. Brother does not object to the use of sale date for calculating FMVs for all shipments exported after October 30, 1984. However, Brother objects to the retroactive application of the section 615 changes to merchandise exported prior to this date.

Department's Position: We disagree with Brother and have based exchange rate calculations and home market comparison sale selections for sales date rather than export date. This is consistent with the Depatment's practice in conducting administrative reviews which were initiated after and covered sales prior to October 30, 1984. The initiation notices of antidumping duty administrative review for the periods subject to this review were published on June 23, 1986 and July 9, 1986. Also, the use of sale date rather than export date is consisitent with the final results of the administrative review of this case covering the 1981–82 period (52 FR 1504, January 14, 1987).

Comment 77: Brother asserts that it did not compare a home market manual typewriter with any electric export PET models despite the statement in the Department's analysis memorandum which suggests that Brother mixed manual and electric model typewriters for comparison.

Department's Position: We acknowledge that the word "manual" in the analysis memorandum should read "electro-mechanical," and recognize that no manual typewriters were suggested by Brother for use as home market comparision models.

Comment 78: Brother argues that, because of the distinction between electro-mechanical PETs and electronic PETs, it would be inappropriate to compare the electro-mechanical models sold in the United States with a more advanced electronic model sold in the home market. For those U.S. sales of electro-mechanical models that Brother suggested be compared with the New Porta-8, the Department should not use the best information otherwise available, but rather consider the New Porta-8 a comparable model. It asserts that, in terms of production costs, the New Porta-8 is more comparable to the U.S. models in question than are any of the other home market models suggested by Brother as alternatives.

Furthermore, Brother objects to the Department's application of the highest margin found on any one sale during the relevant review period to all U.S. sales of models determined by the Department not to have a comparable home market sale model.

SCM contends that the Department was correct in rejecting Brother's model match selections for certain U.S. model PETs because section 771(c) defines similar merchandise in terms of merchandise which is approximately equal in commercial value and merchandise which the Department determines may be reasonably compared.

Department's Position: We have reconsidered our position with respect to those U.S. models previously determined not to have home market comparisons. In determining whether a home market model is similar to a particular U.S. model, we took into consideration the physical characteristics of both models, as well as a comparison of direct production costs. If the difference in direct production costs was too great, then we did not consider the home market model similar for comparison purposes. The cost information used in this analysis was provided in Brother's April 18, 1988 constructed value submission.

Subsequent to the preliminary results notice and based on comments received, we reviewed the constructed value submission to determine if Brother's original home market model selections could be accepted as comparisons. With three exceptions, the U.S. models in question can be considered comparable to the New Porta-8, as suggested by Brother, based on physical characteristics and differences in direct costs. For the other three U.S. models, the XL80, the XL20+3, and L10+3, we used constructed value for FMV, based on the cost information provided by Brother. Since we considered the April 18, 1988 submission in determining whether particular home market models are comparable to certain U.S. models, we also determined it appropriate to use the constructed value information as a basis for FMV for the three remaining U.S. sales models that did not have similar home market comparison models, rather than apply a best information available rate to sales of these three models.

Comment 79: Brother argues that the Department inappropriately deemed its constructed value submission untimely, given the extent of information requested involving numerous typewriter models and review periods. Furthermore, it notes that the Department requested additional information from Brother concerning another expense, thus causing delays in the submission of the constructed value information. Therefore, rejection of the constructed value submission as "untimely" is unreasonable.

Department's Position: As stated above, we considered Brother's constructed value submission for the purpose of determining whether home market model selections were comparable to the U.S. models based on the difference in direct production costs, as well as for calculating constructed values for the three models for which we found no sales of such or similar merchandise in the home market. Although the submission was late and the Department was not required to use it, it was reasonable to do so because Brother was originally given a short period of time to respond to our request for constructed value data, while at the same time responding to other Department requests for information. Furthermore, we had used the submission in determining the suitability of Brother's proposed home market model matches; see our response to Comment 76.

Comment 80: Brother argues that the deduction from ESP of an imputed credit expense, for the period from the date of sale to the date of payment, and imputed interest, for the period from the date of export to the date of sale to the first unrelated customer, is illegal and improper. Even assuming *arguendo* the propriety of deducting these imputed costs, the additional deduction of actual interest expenses represents a double deduction of credit cost. Brother maintains that the actual credit expenses should be allocated over all sales during the period, and the imputed inventory carrying cost deduction should be made in the FMV calculations as well as in in the USP calculations.

Department's Position: We continue to deduct an imputed credit expense and imputed inventory carrying cost in the ESP calculations. Deductions for imputed costs were upheld in *Silver Reed America, Inc. v. United States,* Slip Op. 88–37 (March 18, 1988), and are consistent with the Department's practice as seen in the *Final Results of Administrative Review of Color Television Receivers from Korea* (51 FR 41365, November 14, 1986). Further, Brother's contention that the deduction for actual credit expenses represents a double deduction is in error. The long-term expenses allegedly incurred by Brother to finance inventory are not attributable to the specific sales under consideration. We have not made an adjustment for imputed inventory carrying costs in the home market because Brother made no such claim nor is there information in the record to quantify such an adjustment.

Comment 81: Brother requests that the Department recalculate its U.S. warranty expense deduction, differentiating between the fixed and variable cost components, and treating the labor and other fixed costs as indirect rather than direct expenses. Furthermore, it argues that the indirect costs calculated should be added to BIC's other indirect costs, increasing the ESP cap.

Department's Position: We agree with Brother. We have separated BIC's claimed warranty expense into fixed and variable components, and have made the requested adjustments to direct and indirect costs for the final results.

Comment 82: Brother argues that the Department failed to increase the ESP offset by the amount of commissions paid in the U.S. market. Where a commission is paid in the U.S. market, the ESP offset should be increased by the amount that such commission exceeds the home market commission.

Department's Position: We disagree with Brother. Direct commission expenses incurred in both markets were properly adjusted. Only where no commission (not a lower commission) is paid in one market will allowance be made for indirect expenses up to the amount of the commission in the other market.

Comment 83: Brother argues that the Department neglected to deduct Brother's period rebate in the FMV calculations for 1984–85 and 1985–86. Also, for the 1985–86 period, an incorrect credit expense was deducted in the FMV calculations.

Department's Position: We have corrected Brother's credit and rebate adjustments for the applicable review periods and have made the appropriate adjustments to FMV for the final results.

Comment 84: Brother argues that because negative invoices were a result of erroneous input data, the Department should revise the preliminary results and include the negative invoices in the FMV calculations. At a minimum, Brother requests that the Department correlate the negative invoices to the positive invoices and factor them into the FMV calculations.

Department's Position: For the final results we have excluded both the negative and the corresponding positive invoices from the calculations. Review of the positive sales transactions which Brother intended to offset with negative invoices reveals obvious computer input errors, and, therefore, these positive and negative invoices were excluded from the analysis.

Comment 85: Canon argues that the Department should treat expenses for freight to regional warehouses in both the U.S. and home markets as direct expenses. It maintains that, like the freight expenses for shipment to U.S. warehouses, the shipment costs in the home market represent a variable expense directly attributable to Canon Sales Company's ("CSC's") subsequent sales of the merchandise.

Department's Position: We have disallowed the deduction from home market prices for the cost of shipment from Canon's central warehouse to regional warehouses as a direct expense because the cost was not attributable to specific sales under consideration, consistent with *Silver Reed America Inc. v. United States,* 7 CIT 23, 581 F.Supp. 1,290 (CIT 1984).

Comment 86: Canon argues that, based upon prior practice, the Department should deduct an imputed interest expense from Canon's home market sales. The expense should include costs for financing during shipment from Canon Inc.'s central warehouse to CSC's regional warehouses, and inventory carrying costs at the CSC regional warehouses.

Department's Position: We agree that such expenses are appropriate adjustments to FMV. However, Canon failed to identify and quantify the expense items until after the preliminary results; therefore, we have disallowed the claim. *See Large Power Transformers from Japan* (51 FR 21197, June 11, 1986).

Comment 87: Canon argues that because the model S–15 was not introduced until late in the review period, its warranty experience during 1985–86 understates the actual warranty costs eventually incurred by the company. Therefore, as the best information available, the Department should apply the warranty costs associated with sales of the Typestar 5 model to the S–15 models sold in Japan.

Department's Position: Canon claimed a warranty expenses deduction for the model S–15 in its response based on actual costs incurred. Despite Canon's contention that this figure is low, its claim that we should impute the warranty costs for another model to the S–15 is inappropriate when the actual costs are available and have been verified. If we were to include future costs that were not yet incurred during the period, the possibility exists that such costs will also be considered in the subsequent review and therefore allowed as a deduction twice. Moreover, we cannot assume that the warranty experience for the S–15 will be similar to that for the Typestar 5. We have deducted only the actual warranty costs incurred for this model during the review period.

Comment 88: Canon argues that Canon U.S.A.'s inventory clearance sales should be excluded from the analysis for the final results because the did not constitute a significant portion of the company's total U.S. PET sales during the 1985–86 period. Alternatively, if the sales are inlcuded, the Department should make a circumstance-of-sale adjustment to FMV to reflect the difference between the lowest wholesale prices on its Consumer Typewriter Price List for Typestar 5 and Typestar 50X machines and Canon U.S.A.'s special closeout prices.

Department's Position: We continue to include the sales at their reduced prices in the calculations. Canon's reduced prices were offered only on the beige-and-white Typestar 5 models. Color appears to be the only difference between the "outdated" models and the new models not sold at discount. We

will not ignore the U.S. sales of these typewriters based on their obsolescence. As the Department determined in *Certain Internal-Combustion Industrial Forklift Trucks from Japan* (53 FR 12552, April 15, 1988), "the physical characteristics and functions of these models do not differ significantly from the models being produced and sold under a new model number." Furthermore, there is no provison in the regulations for a circumstance-of-sale adjustment due to inventory clearance sales, and no support on the record for quantifying such an adjustment.

Comment 89: Canon argues that costs incurred by Canon U.S.A. in selling sample demonstration models typewriters at a discount to independent sales representatives are direct selling expenses that should be allocated over all of the company's U.S. sales on a model-by-model basis.

Department's Position: Canon's reliance on *Cyanuric Acid and its Chlorinated Derivatives from Japan* (51 FR 45495, 1986), where we determined that "free samples" to home market customers who had already purchased a significant quantity could be treated as a selling expense, is misplaced. Canon's situation is different in that these sample typewriters were entered into the United States for consumption and ownership was transferred from the exporter. Our determination is consistent with *Television Receiving Sets, Monochrome and Color, from Japan* (50 FR 24278, 1985), where it was determined that sales to employees and sales representatives are transfers of ownership and should be included in the analysis. Therefore, we have continued to treat these sample sales as sales, rather than as a circumstance-of-sale adjustment.

Comment 90: Nakajima disagrees with the methodology the Department used to calculate FMVs for comparison with U.S. sales to two of its customers. In these instances, rather than compare a U.S. sale with a third-country sale to a customer related to the U.S. customer, the Department excluded sales to that third-country customer in its calcualtion of FMV. Nakajima asserts that the Department has no authority for such an exclusion pending further investigation, and argues that it is unfair for the Deaprtment to apply, on a retroactive basis, a new methodology unsupported by authority in the statute or regulations.

SCM supports the position taken by the Department's preliminary results. SCM points out that the existence of related customers in different countries raises the possibility of transshipments. Furthermore, it asserts that the Department should send questionnaires to each of these customers because it may be appropriate to use the resale prices from Nakajima's third-country customers to the first unrelated purchasers as the basis for FMV, in accordance with section 773(f) of the Tariff Act.

Department's Position: Nakajima has submitted information clarifying the nature of the sales transactions in question. Nakajima produces PETs (for shipment to the U.S. and other markets) pursuant to contracts with certain unrelated third-country customers. Those customers then resell the product to related firms in the United States and elsewhere. Nakajima knows at the time that the contracts are negotiated the destination of the units it will produce.

For these final results, we have determined not to exclude from the calculation of FMV Nakajima's sales to the third-country customers, if those sales were destined for the third-country market. Rather, we have based the FMVs on all Nakajima sales into the third-country market or markets, as applicable. Similarly, we continue to base USP on Nakajima's prices to the third-country customers for shipment to the United States. This approach is consistent with our normal practice of determining USP and FMV when the seller knows the ultimate destination of the merchandise at the time of the sale to an unrelated party. *See, Certain Forged Crankshafts from Japan* (52 FR 36984, October 2, 1984) and *Nylon Impression Fabric from Japan* (51 FR 15816, April 2, 1987). *See also, The Trade Agreement Act of 1979, Report on H.R. 4537 by the Committee on Finance, United States Senate*, 96th Cong., 1st Sess. 94 (1979). We are not now convinced that we should change this practice, even given the relationship between the third-country customer and the U.S. purchaser.

We have no evidence that PETs manufactured by Nakajima and destined for the United States have been transshipped through third countries.

Comment 91: Nakajima argues that the FMVs should be based on sales to one third country, in accordance with § 353.5(c) of the Commerce regulations, rather than on an aggregate of sales to numerous third countries. It maintains that the Department should base FMVs for each period on sales to the third country with the largest volume of sales because those sales represent a truer measure of pricing policies than do sales of lesser quantities to other third countries. Nakajima maintains that the Department may aggregate sales to other third countries only if the single third country with the largest volume of sales of the product at issue in a month that is within the six-month time period contemporaneous with the date of the U.S. sale does not provide an adequate sample. Nakajima contends that the Department's decision to aggregate all markets for comparison in order to find contemporaneous sales for comparison to U.S. sales is improper and results in comparisons of large volume U.S. sales at reduce prices to third-country market sales of lesser quantities.

Department's Position: For the final results we first attempted to match all U.S. sales with contemporaneous sales of such or similar models in the third-country market with the largest sales volume. After this step, for all remaining U.S. sales for which no contemporaneous sale of such or similar merchandise existed in that market, we attempted to match the U.S. sale with sales of such or similar merchandise in the aggregate of all other third-country markets. This was necessitated by the time constraints imposed by the Court of International Trade. Any use of a smaller pool of third-country sales, even if desirable, would not have been possible, since we would not have had time to keep enlarging the pool until matches for all U.S. sales had been found. For all those U.S. sales of models that we were still unable to match with third-country sales, we calculated a constructed value as the basis of FMV.

The aggregate of all third country markets for FMV comparison is allowed pursuant to § 353.5(d) of the Commerce Regulations, which states: "if such sales to a single country selected * * * do not provide an adequate sample, sales to additional countries selected * * * may be aggregated." Nakajima improperly relies on this section of the regulations to argue that the Department is obligated to consider the quantities of individual sales in determining whether they are adequate to be used in comparison with the U.S. sales. Section 353.5(d) discusses overall adequacy of the market, and not comparability of quantities of individual U.S. and third-country sales. Furthermore, although Nakajima complains of our comparison of large quantity U.S. sales with small quantity third-country sales, we note that sales to both markets were made in a wide range of quantities.

Comment 92: Nakajima argues that the Department failed to adjust for third-country credit expenses and packing costs.

Department's Position: In most instances, Nakajima's narrative submission with respect to these expenses does not correspond with the values submitted on its computer tapes.

It is not the Department's responsibility to correct faulty data submitted by the respondent. Where the failure to adjust for either expense was discovered to be the Department's error we made the appropriate correction. However, we have not altered any data provided by Nakajima in any of its tapes submitted for any review period.

Comment 93: Nakajima argues that in the Department's calculation of constructed value an adjustment must be made for differences in merchandise and differences in packing.

Department's Position: We disagree. The Department calculated the constructed values using direct production costs and packing costs of the U.S. models for those U.S. sales that could not be matched with sales in the third countries; therefore; there is no basis for difference in merchandise or difference in packing adjustments.

Comment 94: Nakajima identifies computer input errors concerning certain typewriter models, negative numbers, currency conversions and differences in merchandise values for each review period and requests that changes be made prior to the final results.

Department's Position: The clerical errors are primarily the result of errors in the computer tapes submitted by Nakajima. In many instances Nakajima's narrative submissions did not correspond with the computer tapes it submitted. As stated in our response to Comment 90, when the error is in the Department's analysis rather than the result of faulty data provided by Nakajima, the appropriate corrections have been made for the final results.

Comment 95: Nakajima argues that the Department should base the difference in merchandise adjustments for the 1985–86 review period on the difference in production costs at the time of the U.S. sale. Nakajima asserts that the cost of certain components should be determined as of the date of the U.S. sale, rather than the date of reporting. It maintains that only on this basis can it monitor selling prices to the United States and third countries to ensure that its USPs are at not less than FMV.

Department's Position: The constructed value provision of the statute requires that the cost of materials and fabrication be determined "at a time preceding the date of exportation of the merchandise under consideration which would ordinarily permit the production of that particular merchandise in the ordinary course of business" (19 U.S.C. 1677b(e)(1)(A)). There is no provision for the reduction in the cost of components solely because of a decline in prevailing market prices.

Comment 96: Silver argues the Department improperly used the original difference in merchandise figures submitted rather than the revised figures submitted for the 1985–86 review period, and requests that this be corrected for the final results.

Department's Position: We agree and the change is reflected in the final results.

Comment 97: Silver argues that Department's methodology of deducting selling expenses incurred in the home market from the home market price and selling expenses incurred in the United States from USP is inconsistent with the CIT's ruling in *Timken Co. v. United States.* Slip Op. 87–118, 673 F. Supp. 495 (CIT 1987). In that case, the Court decided that in ESP situations the adjustment for direct selling expenses can only be made to FMV. It requests that all adjustments for its selling expenses be made as additions to or deductions from home market price, and that no deductions be made from USP.

Petitioner argues that the *Timken* Court erred in ruling that adjustments for selling prices should be made to the prices in the market in which the selling expense was incurred. Because the statute makes no distinction between direct and indirect selling expenses, it is proper to deduct all selling expenses (direct or indirect) from ESP, pursuant to sections 772 (d) and (e) of the Tariff Act.

Department's Position: We disagree with Silver. The Department continues to make deductions, as appropriate, from both the U.S. and home market prices, pursuant to sections 772 and 773 of the Tariff Act. The *Timken* decision is not yet final.

Comment 98: Silver argues that as a basis for FMV the Department should consider only sales to the two largest retail outlets in Japan, which obtain special discounted prices, because these two customers accounted for more than 20 percent of Silver's total volume of home market sales.

Department's Position: This argument was raised by Silver in the 1981–82 administrative review. As indicated in the final notice for that review, § 353.14 of the Commerce regulations deals with the granting of quantity discounts and does not apply here, where different categories of customers purchase different quantities but where there is no established policy for granting discounts across the board.

Comment 99: Silver argues that, contrary to the ruling in *Silver Reed America v. United States,* Slip Op. 88–37 (March 18, 1988), on the following two issues, the department should (1) deduct from U.S. and home market prices the actual interest expenses incurred rather than the imputed interest costs, and (2) adjust the home market prices for differences in production runs.

Department's Position: We disagree. As the Court observed in *Silver Reed,* "if ITA were precluded from deducting this imputed interest expenses from the ESP, the essential price comparison to determine the margin of dumping, if any, becomes distorted and contrary to the purpose of the dumping law to achieve a fair price comparison." Slip Op. at p. 9. Also, with respect to the claimed adjustment for differences in prices attributable to different quantities produced for sale in the U.S. and home markets, as stated in our response to Silver's claim in the previous review, "the adjustment cannot be allowed since it is not based on quantificable physical differences in the products produced for the two comparison markets."

Comment 100: Towa argues that the Department should have calculated foreign market value on the basis of its sales to unrelated parties in third countries rather than apply the highest rate for a responding firm during the period to its sales as the best information available. It argues that there is a preference for using third-country sales for the calculation of foreign market value in the absence of home market sales of the merchandise. The Department should not have disregarded the third-country sales information that was submitted. Towa contends that there were substantial sales to unrelated parties in third countries and that complete and timely information was submitted to the Department. Therefore, the Department should not have sought constructed value information.

Department's Position: We have revised our decision for the final results and have calculated a margin based on the comparison between Towa's U.S. sale prices and Towa's third-country sale prices. The best information available, the highest rate determined to exist for a responding firm during the review period, was applied to Towa's U.S. sales for the preliminary because Towa failed to respond to our request for constructed value information. However, we have determined that FMV was appropriately based on Towa's sales to third countries.

Final Results of the Review

As a result of the comments received and the correction of clerical errors, we determine that, the following margins exists:

Manufacturer/ exporter	Time period	Margin (percent)
Brother Industries, Ltd	05/21/82 to 05/20/83	0.62
	05/21/83 to 05/20/84	0.32
	05/21/84 to 04/30/85	0.44
	05/01/85 to 04/30/86	4.00
Canon, Inc.	05/01/85 to 04/30/86	5.51
Nakajima All Co., Ltd	05/01/82 to 04/30/83	0.01
	05/01/83 to 04/30/84	0.34
	05/01/84 to 04/30/85	0
	05/01/85 to 04/30/86	0
Silver Seiko, Ltd	04/01/82 to 03/31/83	0.06
	04/01/83 to 03/31/84	0.67
	04/01/84 to 04/30/85	5.20
	05/01/85 to 04/30/86	8.85
Tokyo Juki Industrial Co., Ltd	05/01/85 to 04/30/86	2.40
Towa Sankiden Corp	05/01/85 to 04/30/86	1.41
Panasonic (Matsushita)	05/01/85 to 04/30/86	[1] 4.92
Fujitsu, Ltd	05/01/85 to 04/30/86	[1] 5.20
Tokyo Electric Co., Ltd	05/01/85 to 04/30/86	[1] 4.92

[1] No shipments during the review period. Rates based on shipments in a prior period.

The Department will instruct the Customs Service to assess antidumping duties on all appropriate entries. The Department will issue appraisement instructions for each exporter directly to the Customs Service.

As provided for in section 751(a) of the Tariff Act, a cash deposit of estimated antidumping duties based on the most recent of the above rates shall be required for these firms. Since the most recent margin for Nakajima is zero the Department shall not require a cash deposit of estimated antidumping duties for Nakajima. For any shipments of this merchandise manufactured or exported by the remaining known manufacturers and/or exporters not covered in this review, the cash deposit will continue to be at the rates published in the final results of the last administrative review for each of those firms (52 FR 1504, January 14, 1987). For any future entries of this merchandise from a new exporter, not covered in this or prior reviews, whose first shipments occurred after April 30, 1986, and who is unrelated to any reviewed firm or any previously reviewed firm, a cash deposit of estimated antidumping duties of 8.85 percent shall be required. These deposit requirements are effective for all shipments of portable electric typewriters entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice and shall remain in effect until the publication of the final results of the next administrative review.

This administrative review, and notice are in accordance with sections 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.53a.

Date: October 14, 1988.

Timothy N. Bergan,

Acting Assistant Secretary for Import Administration.

[FR Doc. 88-24202 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-DS-M

Minority Business Development Agency

Business Development Center Applications; North Carolina

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Notice.

SUMMARY: The Minority Business Development Agency (MBDA) announces that it is soliciting competitive applications under its Minority Business Development Center (MBDC) Program to operate an MBDC for a 3-year period, subject to available funds. The cost of performance for the first *12* months is estimated at *$194,118* for the project performance of *03/1/89* to *02/28/90*. The MBDC will operate in the *Charlotte, North Carolina,* Metropolitan Statistical Area (MSA). The first year cost for the MBDC will consist of *$165,000* in Federal Funds and a minimum of *$29,118* in non-Federal funds (which can be a combination of cash, in-kind contribution and fees for services).

The funding instrument for the MBDC will be a cooperative agreement and competition is open to individuals, non-profit and for-profit organizations, local and state governments, American Indian tribes and educational institutions.

The MBDC will provide management and technical assistance to eligible clients for the establishment and operation of businesses. The MBDC program is designed to assist those minority businesses that have the highest potential for success. In order to accomplish this, MBDC supports MBDC programs that can: Coordinate and broker public and private sector resources on behalf of minority individuals and firms; offer them a full range of management and technical assistance; and serve as a conduit of information and assistance regarding minority business.

Applications will be judged on the experience and capability of the firm and it staff in addressing the needs of minority business individuals and organizations; the resources available to the firm in providing management and technical assistance; the firm's proposed approach to performing the work requirements included in the application; and the firm's estimated cost for providing such assistance. It is advisable that applicants have an existing office in the geographic region for which they are applying.

The MBDC will operate for a 3-year period with periodic reviews culminating in annual evaluations to determine if funding for the project should continue. Continued funding will be at the discretion of MBDC based on such factors as an MBDC's satisfactory performance, the availability of funds, and Agency priorities.

Closing date: The closing date for application *November 22, 1988.* Applications must be postmarked on or before *November 22, 1988.*

ADDRESS: Atlanta Regional Office, Minority Business Development Agency, U.S. Department of Commerce, Suite 505, Atlanta, Georgia 30309, 404/347-4091.

FOR FURTHER INFORMATION CONTACT: *Carlton L. Eccles, Regional Director* of the *Atlanta* Regional Office.

SUPPLEMENTARY INFORMATION: Questions concerning the preceding information, copies of application kits and applicable regulations can be obtained at the above address.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Note: A pre-application conference to assist all interested applicants will be held at the U.S. Department of Commerce, Minority Business Development Agency, 1371 Peachtree Street NE., Suite 505, Atlanta, Georgia, Wednesday, November 9, 1988, at 10:00 a.m.

Dated: October 13, 1988.

Carlton L. Eccles,

Regional Director, Atlanta Regional Office.

[FR Doc. 88-24108 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Coastal Migratory Pelagics; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of an additional public hearing.

SUMMARY: A notice of public hearings being held by the South Atlantic Fishery Management Council (Council) to solicit input for proposed Amendments 3 and 4 to the Coastal Migratory Pelagic Resources Fishery Management Plan was published in the **Federal Register** on October 3, 1988 (53 FR 38761). The

Council has announced that an additional hearing is being held. All other information remains the same as published on October 3, 1988.

DATE: The additional hearing is scheduled for Wednesday, October 26, 1988, from 7:00 to 10:00 p.m.

ADDRESS: The hearing will be held at Carteret Community College, Joselyn Auditorium, 3505 Arendell Street, Morehead City, North Carolina.

Dated: October 13, 1988.

Richard H. Schaefer,

Director of Office of Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-24184 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-22-M

North Pacific Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The North Pacific Fishery Management Council's Bycatch Committee and the Council's Gulf of Alaska Groundfish Plan Team will convene public meetings as follows:

Bycatch Committee

On October 17, 1988, at 1:30 p.m., will convene at the Senior Citizen's Center, 402 Lake Street, Sitka, AK, to focus on Gulf of Alaska bycatch problems. Specifically, the Committee will complete its recommended bottom trawl time/area closure plan around Kodiak, continue to develop directed fishing definitions, and examine sablefish bycatch in the rockfish fisheries. The public meeting will adjourn on October 21. On November 7 the Committee will convene at the Northwest and Alaska Fisheries Center, National Marine Fisheries Service, 7600 Sand Point Way, NE., Room 2039, Building 4, Seattle, WA, to wrap up its work on Gulf of Alaska bycatch issues. The public meeting will adjourn on November 11.

Gulf of Alaska Groundfish Plan Team

On November 7 will convene at the Northwest and Alaska Fisheries Center, Room 2079 (address above), to prepare the Team's final Resource Assessment Document, to recommend acceptable biological catches and bycatch rates for 1989 fisheries, and to review groundfish amendment proposals. The public meeting will adjourn on November 11.

For further information contact Mr. Steve Davis, Deputy Director, North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271-2809.

Date: October 4, 1988.

Richard H. Schaefer,

Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 88-24185 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-22-M

Marine Mammals; Application for Permit: Dr. Randall S. Wells (P319B)

Notice is hereby given that an Applicant has applied in due form for a Permit to take marine mammals as authorized by the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361-1407) and the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR Part 216).

1. *Applicant:* Dr. Randall S. Wells, Dolphin Biology Research Associate, c/o Long Marine Laboratory, 100 Shaffer Road, Santa Cruz, California 95060.

2. *Type of Permit Requested:* The applicant requests authorization to capture, sample, mark and release as many as 150 Atlantic bottlenose dolphins (*Tursiops truncatus)* over the next five (5) years, and to recapture selected individuals as many as three times each year for follow-up testing. One of the primary goals of the research program is to thoroughly examine a free-ranging population of bottlenose dolphins in order to determine the age and sex structure of the population and to determine the genetic relationships between individuals. To these ends the applicant proposes to continue capturing dolphins of all ages and both sexes, except females believed to be pregnant and female-calf pairs containing calves less than one year of age, as determined from previous observations. This research is a continuation of a long-term study of the behavior and ecology of a resident community of bottlenose dolphins. Research will be conducted along the central west coast of Florida, from St. Petersburg southward to Fort Myers. Most of the field work will involve the shallow inshore waters near Bradenton and southern Tampa Bay.

Concurrent with the publication of this notice in the **Federal Register,** the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Written data or views, or requests for a public hearing on this application should be submitted to the Assistant Administrator for Fisheries, c/o Office of Protected Resources, National Marine Fisheries Service, 1335 East West Highway, Room 7330, Silver Spring, Mayland 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such a hearing is at the discretion of the Assistant Administrator for Fisheries.

All statements and opinions contained in this notice of application are summaries of those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review in the following offices:

Office of Protected Resources and Habitat Programs, National Marine Fisheries Service, 1335 East-West Highway, Room 7330, Silver Spring, Maryland 20910;

Director, Southeast Region, National Marine Fisheries Service, 9450 Koger Boulevard, St. Petersburg, Florida 33702; and

Director, Southwest Region, National Marine fisheries Service, 300 South Ferry street, Terminal Island, California 90731.

Dated: October 14, 1988.

Nancy Foster,

Director, Office of Protected Resources and Habitat Programs, National Marine Fisheries Service.

[FR Doc. 88-24075 Filed 10-18-88; 8:45 am]

BILLING CODE 3150-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Jamaica

October 14, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 21, 1988.

Authority: E.O 11651 of March 3, 1972, as amended; Sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textilies and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: At the request of the Government of Jamaica, the current designated consultation level for Category 447 is being increased to cover additional GAL-qualifying shipments prior to implemention of the Guaranteed Access Level (GAL).

A copy of the current bilateral agreement between the Governments of the United States and Jamaica is available from the Textiles Division, Economic Bureau, U.S. Department of State, (202) 647-1998.

A description of the textile categories in terms of T.S.U.S.A. numbers is available in the CORRELATION: Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 47745, published on December 16, 1987). Also see 53 FR 22201, published on June 14, 1988.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textitle Agreements.

Committee for the Implementation of Textile Agreements

October 14, 1988.

Commissioner of Customs,
Department of the Treasury,
Washington, D.C. 20229.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on June 9, 1988 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Jamaica and exported, in the case of Category 447, during the period which began on July 1, 1988 and extends through December 31, 1988.

Effective on October 21, 1988, the directive of June 9, 1988 is being amended to increase to 20,000 dozen[1] the limit for wool textile products in Category 447.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24167 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after June 30, 1988.

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

October 14, 1988.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: October 17, 1988.

Authority: E.O. 11651 of March 3, 1972, as amended; sec. 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

FOR FURTHER INFORMATION CONTACT: Jerome Turtola, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 37-4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION: The current limit for wool textile products in Category 434 is being increased for carryover.

A description of the textile and apparel categories in terms of T.S.U.S.A. numbers is available in the *correlation:* Textile and Apparel Categories with Tariff Schedules of the United States Annotated (see **Federal Register** notice 52 FR 4774, published on December 6, 1987). Also see 53 FR 49064, published on December 29, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

October 14, 1988.

Committee for the Implementation of Textile Agreements

October 14, 1988.

Commissioner of Customs
Department of Treasury, Washington, D.C.

Dear Mr. Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1987 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Socialist Federal Republic of Yugoslavia and exported during the period which began on January 1, 1988 and extends through December 31, 1988.

Effective on October 17, 1988 the directive of December 21, 1987 is amended to increase to 9,354 dozen [1] the current limit for wool textile producers in Category 434, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Socialist Federal Republic of Yugoslavia.

The Committee for the Implementation of Textile Agreements has determined that his action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

James H. Babb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 88-24168 Filed 10-18-88; 8:45 am]

BILLING CODE 3510-DR-M

[1] The limit has not been adjusted to account for any imports exported after December 31, 1987.

DEPARTMENT OF DEFENSE

Department of the Navy

Chief of Naval Operations Executive Panel Advisory Committee, Closed Meeting of the Radio-Electric Battle Management Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet November 9-10, 1988 from 9 a.m. to 5 p.m. each day, in San Diego, California. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302-0268. Phone (703) 756-1205.

Dated: October 14, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88–24155 Filed 10–18–88; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of the Radio-Electric Battle Management Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. App.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet December 13–14, 1988 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive Order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Fayer Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: October 14, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88–24156 Filed 10–18–88; 8:45 am]

BILLING CODE 3810–AE–M

Chief of Naval Operations Executive Panel Advisory Committee; Closed Meeting of the Radio-Electric Battle Management Task Force

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app.), notice is hereby given that the Chief of Naval Operations (CNO) Executive Panel Advisory Committee Radio-Electric Battle Management Task Force will meet Janaury 4–5, 1989 from 9 a.m. to 5 p.m. each day, at 4401 Ford Avenue, Alexandria, Virginia. All sessions will be closed to the public.

The purpose of this meeeting is to discuss the development of a Battle Management System that can survive the Soviet challenge, and provide the minimal information advantage necessary to prevail in extended combat environments. These matters constitute classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is, in fact, properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of Title 5, United States Code.

For further information concerning this meeting, contact Faye Buckman, Secretary to the CNO Executive Panel Advisory Committee, 4401 Ford Avenue, Room 601, Alexandria, Virginia 22302–0268. Phone (703) 756–1205.

Date: October 14, 1988.

Jane M. Virga,

Lieutenant, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 88–24157 Filed 10–18–88; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of Fossil Energy; Coal Policy Committee, National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Coal Policy Committee of the National Coal Council.

Date and Time: Tuesday, November 15, 1988, 2:00 p.m.

Place: Stouffer Concourse Hotel, 2399 Jefferson Davis Hwy., Arlington, VA.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal and coal industry issues.

Purpose of the Meeting

To approve final drafts of the three studies the NCC has just completed.

Tentative Agenda

Call to order by Irving Leibson, Chairman.

Approve final drafts of the three studies just completed by the NCC: ("Innovative Clean Coal Technology Deployment," "Use of Coal in Non-Utility Applications," and "The Impact of Substituting U.S. Coal for Imported Energy.")

Discuss and agree on any new studies the Committee wishes to pursue.

Discuss any other business properly brought before the National Coal Council Coal Policy Committee.

Adjournment.

Public Participation

The meeting is open to the public. The Chairman of the Committee is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 13, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–24178 Filed 10–18–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy Committee on Petroleum Storage and Transportation, National Petroleum Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: Committee on Petroleum Storage and Transportation of the National Petroleum Council.

Date and Time: Sunday, November 13, 1988, 4:00 p.m.

Place: New York Hilton and Towers Hotel, Sutton Parlor South, 1335 Avenue of the Americas, New York, New York.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telephone: 202/586–4695.

Purpose of the Parent Council

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to oil and gas or the oil and gas industries.

Purpose of the Meeting

Review and discuss the final draft of their study on "National Gas Trasnportation, Petroleum Inventories and Storage, and Petroleum Liquids Transportation.

Tentative Agenda

Opening remarks by the Chairman and Government Cochairman.

Review and discuss the Committee's proposed final draft report volumes on Natural Gas Transportation, Petroleum Inventories and Storage, and Petroleum Liquids Transportation.

Review and discuss outline for final summary volume.

Discuss the Committee's schedule for completion of the study.

Discuss any other matters pertinent to the overall assignment from the Secretary of Energy.

Public Participation

The meeting is open to the public. The Chairman of the Committee on Petroleum Storage and Transportation is empowered to conduct the meeting in a fashion that will, in his judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Committee will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least five days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC, between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 13, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–24180 Filed 10–18–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy; National Coal Council; Open Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following meeting:

Name: National Coal Council.

Date and Time: Wednesday, November 16, 1988, 9:30 a.m.

Place: Stouffer Concourse Hotel, 2399 Jefferson Davis Hwy, Arlington, VA.

Contact: Margie D. Biggerstaff, U.S. Department of Energy, Office of Fossil Energy (FE–1), Washington, DC 20585, Telepone: 202/586–4695.

Purpose of the Council:

To provide advice, information, and recommendations to the Secretary of Energy on matters relating to coal coal industry issues.

Tentative Agenda

Call to order by James G. Randolph, Chairman.

Remarks by Department of Energy official.

Guest speaker.

Report of the Coal Policy Committee.

Consideration of administrative matters.

Discussion of any other business properly brought before the Council.

Public comment—10-minute rule.

Adjournment.

Public Participation

The meeting is open to the public. The chairman of the Council is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Council will be permitted to do so, either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact Ms. Margie D. Biggerstaff at the address or telephone number listed above. Requests must be received at least 5 days prior to the meeting and reasonable provisions will be made to include the presentation on the agenda.

Transcripts

Available for public review and copying at the Public Reading Room, Room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC between 9:00 a.m. and 4:00 p.m., Monday through Friday, except Federal holidays.

Dated: October 13, 1988.

J. Robert Franklin,

Deputy Advisory Committee Management Officer.

[FR Doc. 88–24179 Filed 10–18–88; 8:45 am]

BILLING CODE 6450–01–M

Energy Information Administration

Agency Information Collections Under Review by the Office of Management and Budget

AGENCY: Energy Information Administration, DOE.

ACTION: Notice of requests submitted for review by the Office of Management and Budget.

SUMMARY: The Energy Information Administration (ETA) has submitted the energy information collection(s) listed at the end of this notice to the Office of Management and Budget (OMB) for review under provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The listing does not include information collection requirements contained in new or revised regulations which are to be submitted under section 3504(h) of the Paperwork Reduction Act, nor management and procurement assistance requirements collected by the Department of Energy (DOE).

Each entry contains the following information: (1) The sponsor of the collection (the DOE component or Federal Energy Regulatory Commission (FERC)); (2) collection number(s); (3) current OMB docket number (if applicable); (4) collection title; (5) type of request, e.g., new, revision, or extension; (6) frequency of collection; (7) response obligation, i.e., mandatory, voluntary, or required to obtain or retain benefit; (8) affected public; (9) an estimate of the number of respondents per report period; (10) an estimate of the number of responses annually; (11) an estimate of the average hours per response; (12) the estimated total annual respondent burden, and (13) a brief abstract describing the proposed collection and the respondents.

DATE: Comments must be filed on or before November 18, 1988.

ADDRESS: Address comments to the Department of Energy Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503. (Comments should also be addressed to the Office

of Statistical Standards, at the address below.).

FOR FURTHER INFORMATION CONTACT: Carole Patton Office of Statistical Standards (EI–70), Energy Information Administration, M.S. IH–023, Forrestal Building, 1000 Independence Avenue., SW., Washington, DC 20585, (202) 586–222.

SUPPLEMENTARY INFORMATION: If you anticipate that you will be submitting comments, but find it difficult to do so within the period of time allowed by this Notice, you should advise the OMB DOE Desk Officer of your intention to do so as soon as possible. The Desk Officer may be telephoned at (202) 395–3084.

The energy information collection submitted to OMB for review was:

1. Energy Information Administration.
2. EIA–23, 23P, and 64A.
3. 1905–0057.
4. Oil and Gas Reserve System Surveys.
5. Extension through December 31, 1991.
6. Annually.
7. Mandatory.
8. Businesses or other profit.
9. 9,029 respondents annaully.
10. 9,029 rsponses annually.
11. The estimated average hours per response for the forms in the Oil and Gas Reserves System Surveys are: EIA–23, 25.47 hours; EIA–23P, .25 hours; and EIA–64A, 5.90 hours.
12. 123,719 hours annually (total).
13. These surveys provide data on the reserves of crude oil, natural gas, and natural gas liquids, determine the status and approximate level of production, and provide data used to estimate natural gas liquids production and reserves. Data are published in various EIA publications. Respondents are domestic oil and gas well operators, and natural gas processing plant operators.

Statutory Authority:

Secs. 5(a), 5(b), 13(b), and 52, Pub. L. 93–275, Federal Energy Administration Act of 1974), 15 U.S.C. 764(a), 764(b), 772(b), and 790a.

Issued in Washington, DC, October 14, 1988.

Yvonne M. Bishop,

Director, Statistical Standards, Energy Information Administration.

[FR Doc. 88–24182 Filed 10–18–88; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research; Basic Energy Science Advisory Committee; Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and § 101–6.1015 of the Final Rule on Federal Advisory Committee Management, (41 CFR 101–6.1015) and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Basic Energy Sciences Advisory Committee has been renewed for a 2-year period ending October 16, 1990. The Committee will continue to provide advice to the Secretary of Energy on the Basic Energy Sciences (BES) program.

The renewal of the Basic Energy Sciences Advisory Committee has been determined to be essential to the conduct of the Department's business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act (Pub. L. No. 92–463), the Department of Energy Organization Act (Pub. L. No. 95–91), and regulations and directives implementing those statutes.

Further information regarding this advisory committee can be obtained from Elinor Donnelly (202–586–3448).

Issued in Washington, DC, on October 13, 1988.

Howard H. Raiken,

Advisory Committee Management Officer.

[FR Doc. 88–24181 Filed 10–18–88; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Project No. 3407–020]

Magic Reservoir Hydroelectric, Inc.; Availability of Environmental Assessment

Issued October 13, 1988.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for amendment of license for the Magic Dam Hydroelectric Project and has prepared an Environmental Assessment (EA) for the proposed amendment. In the EA, the Commission's staff has analyzed the potential environmental impacts of the proposed amendment and has concluded that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24161 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 9214–001]

Provo Hydro Associates; Availability of Environmental Assessment

October 14, 1988

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR, Part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the Murdock Dam Hydroelectric Project and has prepared an environmental assessment (EA) for the proposed project. In the EA, the Commission's staff analyzes the potential environmental impacts of the proposed project and concludes that approval of the proposed project, with appropriate mitigative measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, Room 1000, of the Commission's offices at 825 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24176 Filed 10–18–88; 8:45 am]

BILLING CODE 6717–01–M

[EL88–34–000, et al.]

Hydroelectric Applications (Windsor Machinery Co., et al); Applications Filed with the Commission

Take notice that the following hydroelectric applications have been filed with the Federal Energy Regulatory Commission and are available for public inspection:

1a. *Type of Application:* Declaration of Intention.

b. *Project No:* EL88–34.

c. *Date Filed:* July 7, 1988

d. *Applicant:* Windsor Machinery Company.

e. *Name of Project:* Tuck-Brookfield.

f. *Location:* On Still River, near the intersection of routes 25 and 7, Fairfield County, CT.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b)

h. *Applicant Contact:* Mr. Harry A. Terbush, President, Windsor Machinery Company, Inc., R.D. #3, Box 157 Orbit Lane, Hopewell Junction, NY 12533, (914) 897–4194.

i. *FERC Contact:* Diane M. Scire, (202) 376–1758.

j. *Comment Date:* November 17, 1988.

k. *Description of Project:* The project would consist of: (1) An existing reservoir with a surface area of less than 1 acre; (2) an existing 8.5-foot-high and 47-foot-long concrete dam; (3) flashboards; (4) a turbine to be refurbished or replaced, with an estimated kilowatt rating of 40–60kw; (5) a 3-foot-diameter and 15-foot-long existing penstock; (6) a proposed transmission line approximately 428.5 feet long; and (7) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Power generated will be utilized for the applicant's electroplating operation. The project is interconnected with the local utility (Connecticut Light and Power).

m. This notice also consists of the following standard paragraphs: B, C, and D2.

2a. *Type of Application:* Declaration of Intention.

b. *Project No:* El88–36–000.

c. *Date Filed:* August 25, 1988.

d. *Applicant:* Patrick O. Clemans.

e. *Name of Project:* Ashley Creek Hydro.

f. *Location:* Ashley Creek in Lake County, Montana.

g. *Filed Pursuant to: Section 23(b) of the Federal Power Act, 16 U.S.C. 817(b)*

h. *Applicant Contact:* Patrick O. Clemans, P.O. Box 173, Homer, AK 99603.

i. *FERC Contact:* Etta Foster, (202) 376–9064.

j. *Comment Date:* November 14, 1988.

k. *Description of Project:* The proposed project would consist of: (1) A proposed concrete/framed wood dam of less than 200-feet-long and less than 10-feet high; (2) a small pool at elevation 3800 feet m.s.l. of negligible size and storage capacity; (3) an inlet with trash racks; (4) a 12-inch-diameter, 3000-foot-long penstock; (5) a powerhouse containing 1 or 2 turbines with an installed capacity of 99 kW; (6) a 300-foot-long transmission line and (7) appurtenant facilities. The applicant request that the Commission investigated and determine whether the proposed project is subject to licencing pursuant to section 23(b) of the Federal Power Act.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* Applicant intends to sell excess power to Montana Power Company.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

a. *Type of Application:* Declaration of Intention.

b. *Project No:* EL88–37–000.

c. *Date Filed:* September 1, 1988.

d. *Applicant:* Kentucky Utilities Company.

e. *Name of Project:* Dix Project.

f. *Location:* Located in Mercer and Garrard Counties, Kentucky, at a point approximately two miles above the junction of Dix River with the Kentucky River.

g. *Filed Pursuant to:* Section 23(b) of the Federal Power Act, 16 U.S.C. § 817(b).

h. *Applicant Contact:* Malcolm Y. Marshall, David Lott Hardy, Barnett and Alagia, 444 South Fifth Street, Louisville, KY 40202, (502) 585–4131.

i. *FERC Contact:* Diane M. Scire, (202) 376–1758.

j. *Comment Date:* November 14, 1988.

k. *Description of Project:* The Dix Project, owned and operated by Kentucky Utilities Company, consists of: (1) A 3,600-acre reservoir, with a storage capacity of approximately 300,000 acre-feet; (2) a 1,100-foot-long, 280-foot-high rock-fill dam; (3) a 24-foot-diameter, 913-foot-long tunnel; (4) three 8-foot-diameter, 150-foot-long steel penstocks; (5) a 114-foot-long, 50-foot-wide powerhouse, containing 3 generating units, each rated at 8,000 kilowatts; and (6) appurtenant facilities.

When a Declaration of Intention is filed with the Federal Energy Regulatory Commission, the Federal Power Act requires the Commission to investigate and determine if the interests of interstate or foreign commerce would be affected by the project. The Commission also determines whether or not the project: (1) Would be located on a navigable waterway; (2) would occupy or affect public lands or reservations of the United States; (3) would utilize surplus water or water power from a government dam; or (4) if applicable, has involved or would involve any construction subsequent to 1935 that may have increased or would increase the project's head or generating capacity, or have otherwise significantly modified the project's pre-1935 design or operation.

l. *Purpose of Project:* The generated energy is transmitted to the Kentucky Utilities power system. Dix Dam also provides water supply storage for Danville and Boyle Counties.

m. This notice also consists of the following standard paragraphs: B, C, and D2.

4a. *Type of Application:* New License (Over 5 MW).

b. *Project No:* 1864–003.

c. *Date Filed:* December 24, 1987.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Bond Falls.

f. *Location:* On the Ontonagon River in Ontonagon, and Gogebic Counties, Michigan, and Vilas County, Wisconsin.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Elio Argentati, Upper Peninsula Power Company, 616 Shelden Avenue, Houghton, MI 49931, (906) 482–0220.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* November 10, 1988.

k. *Description of Project:* The Bond Falls Project consists of four developments:

(A) The existing Victoria Development consists of: (1) An earthfill structure (north embankment) 50 feet high and 178 feet long; (2) a reinforced concrete intake structure with a 14-foot-wide and 14-foot-high steel intake gate; (3) an archbuttress dam, 115 feet high and 301 feet long, consisting of four arches; (4) an ogee type concrete spillway 100 feet long, consisting of four bays each 22 feet wide equipped with 22-foot/wide and 13-foot-high steel radial gates; (5) an earth and rockfill structure (south embankment) 68 feet long and 20 feet high; (6) a 250-acre reservoir with a storage capacity of 10,500 acre-feet at a normal maximum surface elevation of 910 fet msl; (7) a 6,300-foot-long, 10-foot/diameter woodstave, steel-banded penstock; (8) a 491,300 gallon surge tank; (9) a brick veneer concrete powerhouse, 30 feet wide, 82 feet long and 50 feet high housing two 6,000-kW turbine-generator units; (10) an excavated tailrace 45 feet wide and approximately, 300 feet long; (11) two 69-kV transmission lines; (12) a 11.5/69kV substation; and (13) appurtenant facilities.

(B) The existing Bond Falls Development consists of: (1) An earth-filled main dam approximately 45 feet high and 900 feet long with a central concrete spillway section; (2) an earthfilled control dam approximately 35 feet high and 850 feet long; (3) three earth-filled dikes on the rim of the reservoir; (4) a storage reservoir with a water surface area of 2,160 acres, an effective storage capacity of 39,000 acre-foot, and a normal maximum surface elevation of 1,475.9 msl; (5) a trapezoidal canal 20 feet wide and 7,500 feet long; and (6) appurtenant facilities.

(C) The existing Bergland Storage Development consists of: (1) A wood and steel I beam dam approximately 4 feet high and 179 feet long situated between concrete retaining walls; (2) Lake Gogebic storage capacity of 276,000 acre-feet, and a normal maximum surface elevation of 1,296.2 feet msl; and (3) appurtenant facilities.

(D) The existing Cisco Lakes Storage Development consists of: (1) A timber decked concrete dam 11 feet high and 21 feet long; (2) a chain of lakes with a water surface area of 4,025 acres, a storage capacity of 4,025 acre-feet, and a water surface elevation of 1,683.5 feet msl; and (3) appurtenant facilities.

The applicant estimated from historical generation that the average annual energy generation will be 72,010 MWh. The applicant is the sole owner of the existing project facilities and has no plans to modify the existing facilities or operation.

The existing project would also be subject to Federal takeover under sections 14 and 15 of the Federal Power Act. The net investment cost for the project is $4,702,000.

1. This notice also consist of the following standard paragraphs: B, C, and D1.

5a. *Type of Application*: New License Major (over 5 MW).

b. *Project No.*: 2205–006.

c. *Date Filed*: May 27, 1987.

d. *Applicant*: Central Vermont Public Service Corporation.

e. *Name of Project*: Lamoille River Project.

f. *Location*: Lamoille River in Chittenden, Franklin, and Lamoille Counties, Vermont.

g. *Filed Pursuant to*: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact*: Mr. Darrow R. McLeod, Vice President—Engineering and Operations, Central Vermont, Public Service Corp., 77 Grove Street, Rutland, VT 05701, (602) 773–2711.

i. *FERC Contact*: Robert Bell, (202) 376–9237.

j. *Comment Date*: November 14, 1988.

k. *Description of Project*: The existing 4 developments consist of:

Peterson Development

(1) Dam: Concrete gravity spillway-dam, 347 feet long between 51 and 75 feet high.

(a) 100-foot-long bascule gate, 6 feet high, El. 151.0 top;

(b) 247 feet of flashboards, 5 feet high, El. 152.0 top;

(c) Dam crest El. 145.0; and

(d) 60-foot intake section in left bank.

(2) Reservoir: 2.5 miles of pondage upstream to Milton Dam.

(a) Normal pool elevation 151 feet;

(b) Normal operating head 52 feet;

(c) Surface area, 136 acres; and

(d) Storage, 2840 acre-feet.

(3) Intake:

(a) 60-foot section, integral part of dam;

(b) 24-foot intake channel in left bank; and

(c) 14-foot diameter penstock with intake gate through dam.

(4) Powerhouse:

(a) Concrete substructure, steel frame, brick walls;

(b) Turbine, 8,100 hp adjustable blade, propeller-type at 55-foot head;

(c) 5,000 kW generator;

(d) Remote controlled from the Milton Plant; and

(e) Substation, 2.76 miles of 33–kV transmission line, access road and other necessary appurtenances.

Milton Development

(1) Dam: Concrete gravity spillway dam 136 feet long, 25 feet high.

(a) 136-foot spillway controlled by flashboards 2'10" high;

(b) Dam crest El. 243.4; top of flashboards El. 246.2; and

(c) Canal forebay channel 200 feet long with headgate.

(2) Reservoir:

(a) Surface area 11 acres; and

(b) Storage, 93 acre-feet.

(3) Intake:

(a) 11-foot-diameter steel penstock 380 feet long;

(b) One 16-foot diameter surge tank with provisions for an additional surge tank; and

(c) Two 7-foot 9-inch diameter penstocks about 70 feet long to the powerhouse.

(4) Powerhouse:

(a) Concrete substructure, brick superstructure;

(b) Two 4,500 hp Francis turbines, net operating head 97 feet;

(c) Two 3,000 kW generators;

(d) Excavated tailrace; and

(e) Substation, trash rack and other necessary appurtenances.

Clark Falls

(1) Dam: Concrete gravity spillway-dam 40 feet high.

(a) 387 feet length of spillway as follows: 170 feet of stanchion flashboards 20.5 feet high, three 24-foot-wide taintor gates 23.5 feet high, 100 feet of crest controlled by 2-foot-high flashboards;

(b) Impervious earth core dike 440 feet long; and

(c) 23-foot intake gate section.

(2) Reservoir: Storage, 6,000 acre-feet; surface area 690 square miles.

(3) Intake:

(a) 12-foot-diameter penstock 360 feet long to;

(b) Forebay 28 × 22 feet; and

(c) 2 gates between forebay and powerhouse.

(4) Powerhouse:

(a) Concrete substructure, steel frame, brick walls;

(b) Turbine, 4,000 hp adjustable blade, propeller-type at 42 feet of head;

(c) 3,000-kW generator;

(d) Excavated tailrace;

(e) Remote controlled from Milton plant; and

(f) Substation and 0.25 mile of 33-kV transmission line.

Fairfax Falls Development

(1) Dam: Concrete gravity spillway dam in two sections.

(a) A 90-foot-long section with 2-foot-high flashboards and a 165-foot-long section with 3-foot-high flashboards;

(b) A 53.5-foot-long section with a waste, trash and sand sluice together with two penstock openings; and

(c) A left bank concrete wing wall.

(2) Reservoir: Storage, 142 acre-feet; surface area 529 square miles.

(3) Intake:

(a) Intake with head gates; and

(b) Two 27-foot-diameter steel penstocks each 27 feet long.

(4) Powerhouse:

(a) Concrete and brick structure;

(b) 2 Francis type turbines each rated at 2,000 hp at 80-foot net head;

(c) Two 21,400 kW generators;

(d) Excavated tailrace; and

(e) Substation.

The Lamoille River Project, as proposed, would consist of: The Milton, Clark Falls, and Peterson Developments would remain the same. The Fairfax Falls Development would remain the same on the west bank, except that on the east bank there would be proposed facilities consisting of: (1) A proposed intake structure; (2) a proposed 8-foot-diameter concrete power tunnel 60 feet long; (3) a proposed powerhouse built in the existing 1904 underground rock powerhouse cavern having one generating unit with an installed capacity of 3,500-kW; (4) an enlarged existing tailrace; (5) a proposed 450-foot-long 34.5-kV transmission line to tie in at the existing switchyard at the west bank powerhouse; and (6) appurtenant facilities. The applicant estimates the average annual generation would be 113,700,000-kWh. The applicant owns all of the existing project facilities.

The existing project would also be subject to Federal take-over under sections 14 and 15 of the Federal Power Act. Based on the license expiration of December 31, 1987, the applicant's estimated net investment in the project would amount to $2,305,381, and the estimated severance damages would amount to $42,925,000.

l. *Purpose of Project*: All project energy generated would be utilized by the applicant for sale to its customers.

m. This notice also consists of the following standard paragraphs: B and C.

6a. *Type of Application:* New License (< 5 mw).

b. *Project No.:* 2386–001.

c. *Date Filed:* February 19, 1988.

d. *Applicant:* City of Holyoke, Massachusetts.

e. *Name of Project:* Holyoke Number 1 Hydro Project.

f. *Location:* On the canal system fed by the Connecticut River in Holyoke, Hampden County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. George E. Leary, Holyoke Gas and Electric Department, 70 Suffolk Street, Holyoke, MA 01040, (413) 536–9300.

i. *FERC Contact:* Michael Dees, (202) 376–9414.

j. *Comment Date:* December 5, 1988.

k. *Description of Project:* The existing project consists of: (1) A brick powerhouse 38 feet wide and 50 feet long containing two 240-kW and two 288-kW turbine-generators with a total capacity of 1,056 kW; (2) two steel penstocks 10 feet in diameter and 36.5 feet long; (3) two tailraces 328.5 feet long and 20 feet wide; and (4) appurtenant facilities. The applicant estimates from historical generation that the average annual generation is 3.3 GWh. The applicant is the owner of the existing project facilities and has no plan to modify the existing facilities or operation. The existing project is subject to Federal takeover under section 14 of the Federal Power Act.

l. This notice also consists of the following standard paragraphs: B, C, and D1.

7a. *Type of Application:* Amendment of License.

b. *Project No.:* 2735–012.

c. *Date Filed:* August 1, 1988.

d. *Applicant:* Pacific Gas and Electric Company.

e. *Name of Project:* Helms Pumped Storage Project.

f. *Location:* The project utilizes the Courtright and Wishon reservoirs in Fresno County, California.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Rodney J. Strub, Manager, Hydro Generation, Pacific Gas and Electric Company, 77 Beale Street, Room F759A, San Francisco, CA 94106.

i. *FERC Contact:* Ken Fearon, (202) 376–9789.

j. *Comment Date:* November 14, 1988.

k. *Description of Amendment:* The licensee proposes to change the authorized project boundary to include: (1) The existing 21–kV wood pole transmission line which extends from the Woodchuck Substation (FERC Project No. 1988) to the Helms Powerhouse access tunnel portal; (2) the existing 21–kV wood pole transmission line which extends from the Woodchuck Substation through Wishon Village and then along McKinley Grove Road generally westerly to a point on the easterly perimeter of the Helms Support Facilities; (3) the existing Helms Support Facilities; (4) proposed permanent employees housing up to a maximum of 30 home sites; and (5) an 80 acre wildlife habitat management area.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

8a. *Type of Application:* Surrender of License.

b. *Project No.:* 2922–010.

c. *Date Filed:* August 24, 1988.

d. *Applicant:* The Electric Plant Board of the City of Glasgow, Kentucky.

e. *Name of Project:* Nolin River Reservoir Dam Project.

f. *Location:* On the Nolin River in Edmonson County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William J. Ray, P.E., The Electric Plant Board of the City of Glasgow, 100 Mallory Drive, Glasgow, Kentucky 42141, (502) 651–8341.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* November 14, 1988.

k. *Description of Proposed Surrender:* The proposed project would have consisted of: (1) A 66-foot-high, two-level intake structure; (2) a 900-foot-long, 164-inch-diameter steel lined tunnel; (3) a turbine house containing three generating units, two each of 4.25 MW, and one of 1.5 MW for a total capacity of 10 MW, and located downstream of the existing dam on the right bank of the Nolin River; (4) a 145-foot-long stilling basin; (5) a trapezoidal discharge channel about 900 feet long, and leading to the Nolin River; (6) a 69-kV transmission line, approximately 2 miles long, interconnecting with the Warren Rural Electric Cooperative system; and (7) appurtenant facilities.

The licensee states that due to its inability to obtain a power sales contract, the licensee wishes to surrender its license. No construction has started.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

98a. *Type of Application:* Surrender of License.

b. *Project No.:* 2923–010.

c. *Date Filed:* August 24, 1988.

d. *Applicant:* The Electric Plant Board of the City of Glasgow, Kentucky.

e. *Name of Project:* Green River Reservoir Dam Project.

f. *Location:* On the Green River in Taylor County, Kentucky.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. William J. Ray, P.E., The Electric Plant Board of the City of Glasgow, 100 Mallory Drive,

Glasgow, Kentucky 42141, (502) 651–8341.

i. *FERC Contact:* Steven H. Rossi, (202) 376–9814.

j. *Comment Date:* November 14, 1988.

k. *Description of Proposed Surrender:* The proposed project would have consisted of: (1) A 140-foot-high, two-level intake structure; (2) a 1,300-foot-long steel lined tunnel 162 inches in diameter; (3) a semi-outdoor powerhouse approximately 1,500 feet downstream of the dam, containing four generating units, two each for 4.75 MW, and two of .75 MW capacity, for a total capacity of 11.0 MW; (4) a trapezoidal discharge channel, approximately 500 feet long leading to the existing discharge channel to the Green River; (5) a 69-kV transmission line, approximately 6-miles-long, interconnecting with the Taylor County Rural Electric Cooperative system; and (6) appurtenant facilities.

The licensee states that due to its inability to obtain a power sales contract, the licensee wishes to surrender its license. No construction has started.

l. This notice also consists of the following standard paragraphs: B, C, and D2.

10a. *Type of Application:* Transfer of License.

b. *Project No.:* 3623–019.

c. *Date Filed:* August 11, 1988.

d. *Applicant:* The Borough of Seven Springs.

e. *Name of Project:* Youghiogheny Project.

f. *Location:* Borough of Seven Springs, Somerset County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James N. McClure, Chairman, Youghiogheny Hydroelectric Authority, Seven Springs Mountain Resort Executive Offices, Champion, PA 15622–9801, (814) 352–7777.

i. *FERC Contact:* Mary Nowak, (202) 376–9634.

j. *Comment Date:* November 14, 1988.

k. *Description of Transfer:* The Borough of Seven Springs proposes to transfer its license, the Youghiogheny Project, to the Youghiogheny Authority for the following reasons. (1) The Youghiogheny Authority can act much quicker on management of day-to-day operations of the plant, thus fulfilling license requirements. (2) It would be more economically feasible to have the Youghiogheny Authority operate the project.

l. This notice also consists of the following standards paragraphs: B, C, D2.

11a. *Type of Application:* Transfer of License.

b. *Project No.:* 3991–006.

c. *Date Filed:* September 14, 1988.

d. *Applicant:* STS Energenics Ltd., Inc. and STS Consultants Inc.

e. *Name of Project:* Cross Cut Diversion Dam Water Power Project.

f. *Location:* On the Henrys Fork of the Snake River, in Fremont County, Idaho.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Peter Bulandr, Vice President, STS Energenics Ltd., Inc., 111 Pfingsten Road, Northbrook, IL 60062, (312) 272–6520; Mr. Douglas E. Keats, President, STS Consultants Ltd., 111 Pfingsten Road Northbrook, IL 60062, (312) 272–6520.

i. *FERC Contact:* Thomas Dean, (202) 376–9562.

j. *Comment Date:* November 14, 1988.

k. *Description of Application:* STS Energenics Ltd., Inc. (transferor) proposes to transfer its license issued on September 29, 1986, to STS Consultants Ltd. (transferee). The transferee is a private corporation organized under the laws of the State of Wisconsin, and domesticated in the State of Illinois.

l. This notice also consists of the following standard paragraphs: B and C (except for notice of intent to file competing application and competing application filings, which are not applicable to transfer of license applications).

12a. *Type of Application:* Amendment of License.

b. *Project No.:* 4639–006.

c. *Date Filed:* June 30, 1988.

d. *Applicant:* Christine Falls Corporation.

e. *Name of Project:* Christine Falls Project.

f. *Location:* On the Sacandaga River in Hamilton County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Neal F. Dunlevy, 185 Genesee Street, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Robert Bell, (202) 376–0237.

j. *Comment Date:* November 17, 1988.

k. *Description of Project:* Project works consisting of: (a) The concrete gravity dam 12 feet high and 165 feet long, with 3-foot-high flashboards; (b) a reservoir having a surface area of 1.1 acres with negligible storage and a normal water surface elevation of 1,699.6 feert m.s.l.; (c) an intake structure; (d) a steel penstock 650 feet long and 66 inches in diameter; (e) a powerhouse containing two generating units with a total capacity of 725 kW; (f) a 4.8–kV transmission line 9,500 feet long; and (g) appurtenant facilities.

The amended project would consist of: (a) A concrete gravitgy dam 12 feet high and 165 feet long, with 3-foot-high flashboards; (b) a reservoir having a surface area of 1.1 acres with negligible storage and a normal water surface elevation of 1,699.2 feet m.s.l.; (c) an intake structure; (d) a steel penstock 72 inches in diameter and 650 feet long; (e) a powerhouse containing two generating units with a total installed capacity of 850 kW; (f) a 4.8–kV transmission line 9,500 feet long; and (g) appurtenant facilities.

The average annual generation would remain the same as licensed although the installed capacity increased from 725 kW to 850 kW.

l. *Purpose of Project:* Applicant proposes to sell all energy generated to a local utility.

m. This notice also consists of the following standard paragraph: B, C, and D1.

13a. *Type of Application:* Surrender of License.

b. *Project No.:* 7188–006.

c. *Date Filed:* August 5, 1988.

d. *Applicant:* Public Service Company of New Hampshire.

e. *Name of Project:* Murphy Dam Project.

f. *Location:* On the Connecticut River in Coos County, New Hampshire.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Thomas B. Getz, Public Service Company of New Hampshire, 1000 Elm Street, Manchester, NH 03105.

i. *FERC Contact:* Robert Bell, (202) 376–9237.

j. *Comment Date:* November 17, 1988.

k. *Description of Project:* The project consists of: (a) 112–foot-high and 2,100-foot-long Murphy Dam; (b) a reservoir (Lake Francis) with a storage capacity of 96,000 acre-feet and normal surface elevation fluctuating between 1,385 and 1,340 feet USGS; (c) a 13-foot-diameter steel-lined concrete conduit through the dam; (d) an 8-foot-diameter and 540-foot-long penstock; (e) a powerhouse with one 2,250 kW turbine-generator unit; (f) a 100-foot-long tailrace; (g) 4.16-kV generator leads, a 3-phase 4.16/34.5-kV 2.5 MVA transformer, a 500-foot-long and 34.5-kV transmission line; and (h) other appurtenances.

The licensee is surrendering because the proposed project is no longer feasible for it. No construction has taken place at this site.

l. This notice also consists of the following standard paragraphs: B, C and D2.

14a. *Type of Application:* Surrender of License.

b. *Project No.:* 8955–004.
c. *Date Filed:* September 19, 1988.
d. *Applicant:* D.J. Pitman International Corporation.
e. *Name of Project:* Oakland Mills Hydro Project.
f. *Location:* On the Skunk River in Henry County, Iowa.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Miriam W. Newman, 21 Green Street, Concord, NH 03301, (603) 225–9716.
i. *FERC Contact:* Ed Lee on (202) 376–5786.
j. *Comment Date:* November 23, 1988.
k. *Description of Project:* The license for this project was issued on August 22, 1986, for an installed capacity of 1,060 kW. The licensee states that it was determined that the project would be economically infeasible. No construction has commenced at the project site.
l. This notice also consists of the following standard paragraphs: B and C.
15a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10626–000.
c. *Date Filed:* July 15, 1988.
d. *Applicant:* Tionesta Hydro Associates.
e. *Name of Project:* Tionesta Dam Hydro Project.
f. *Location:* On the Tionesta Creek in Forest County, Pennsylvania.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. David M. Coombe, Synergics, Inc., 410 Severn Avenue, Suite, 313 Annapolis, MD 21403, (301) 268–8820.
i. *FERC Contact:* Mary Nowak, (202) 376–9634.
j. *Comment Date:* November 10, 1988.
k. *Description of Project:* The proposed project would utilize the existing U.S. Corps of Engineers Tionesta dam and would consist of: (a) A proposed penstock approximately 50 feet long and 12 feet in diameter connected to an existing intake structure located approximately 2,000 feet upstream from the dam; (b) a proposed powerhouse containing two new turbine-generator units having a total installed capacity of 5,000 kilowatts; (c) a 75-foot-wide by 50-foot-long tailrace; (d) a proposed transmission line; and (e) appurtenant facilities. The proposed project would have an average annual generation of approximately 19 gigawatthours. The applicant estimates that the studies under permit would be about $150,000.
l. *Purpose of Project:* All project energy generated would be sold to the Pennsylvania Electric Company.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
16a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10633–000.
c. *Date Filed:* August 8, 1988.
d. *Applicant:* Marble Creek Hydro Associates.
e. *Name of Project:* Marble Creek Hydroelectric Project.
f. *Location:* On Marble Creek in Shoshone County, Idaho.
g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Dominique Darne, Might Development Corporation, 1900 L Street, NW., Suite 608, Washington, DC 20036, (202) 775–4692.
i. *FERC Contact:* Nanzo Coley, (202) 376–9416.
j. *Comment Date:* December 2, 1988.
k. *Description of Project:* The proposed project would occupy lands under the jurisdiction of the U.S. Forest Service and the Bureau of Land Management. The proposed project would consist of: (1) A proposed diversion structure approximately 6 feet high, which would create an impoundment of less than 2 acre-feet; (2) a proposed 80-inch-diameter penstock, which would be approximately 4,150 feet long; (3) a proposed powerhouse containing two generating units with a total rated capacity of 3,200 kW; (4) a proposed tailrace; (5) a proposed 24-kV, 2 mile-long transmission line; and (6) appurtenant facilities. The estimated average annual energy output for the project is 10,000,000 kWh. The applicant estimates that the cost of the work to be performed under the preliminary permit would be $135,000.
l. *Purpose of Project:* Power produced at the project would be sold to a local utility.
m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.
17a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10645–000.
c. *Date Filed:* August 15, 1988.
d. *Applicant:* City of Richmond, Virginia.
e. *Name of Project:* Hollywood-Belle Isle.
f. *Location:* On the James River in the City of Richmond, Virginia.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. David B. Kearney, City Hall, Room 300, 900 East Broad Street, Richmond, Virginia 23219, (804) 780–7952.
i. *FERC Contact:* Mr. Michael Dees, (202) 376–9414.
j. *Comment Date:* December 14, 1988.
k. *Competing Application:* Project No. 10555–000. Date Filed: March 9, 1988.
l. *Description of Project:* The proposed project would consist of: (1) The existing Hollywood Dam approximately 3,800 feet long and ranging in height from three to 12 feet, and the existing breached Belle Isle Dam, approximately 1,400 feet long and ranging in height from three to 10 feet; (2) an existing inlet race at Belle Isle approximately 800 feet long and 100 to 125 feet wide; (3) an existing powerhouse 40 feet by 70 feet housing three proposed hydropower units with a total capacity of 3,000 kW; (4) an existing tailrace approximately 100 feet long; (5) a proposed 4.16-kV transmission line approximately 800 feet long; and (6) appurtenant facilities. The applicant estimates that the average annual energy generation would be 12.3 GWh and that the cost of the studies to be conducted under the permit would be $100,000. The applicant is the owner of the dams.
m. This notice also consists of the following standard paragraphs: A8, A10, B, C and D2.
18a. *Type of Application:* Preliminary Permit.
b. *Project No.:* 10647–000.
c. *Date Filed:* August 19, 1988.
d. *Applicant:* City of Seattle.
e. *Name of Project:* Cedar Falls Project.
f. *Location:* On the Cedar River in King County, Washington.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Randall Hardy, City Light Department, 1015 Third Avenue, Seattle, Washington 98104, (206) 684–3203.
i. *FERC Contact:* Nanzo T. Coley, (202) 376–9416.
j. *Comment Date:* November 28, 1988.
k. *Description of Project:* The existing dam and associated facilities are owned by the City of Seattle. The existing project consist of: (1) A concrete dike that is 440 feet long and 40 feet high; (2) the Chester Morse Lake with a surface area of 1,757 acres and a storage capacity of 78,480 acre-feet at an elevation of 1,560 feet m.s.l.; (3) the Masonry dam which is 980 feet long and 100 feet high, located 4,000 feet downstream of the dike; (4) the Masonry reservoir with a surface area of 177 acres and a storage capacity of 6,085 acre-feet at an elevation of 1,500 feet m.s.l.; (5) an 11-foot-diameter, 1,500-foot-long concrete tunnel that connects to two 78-inch-diameter, 7,500-foot-long penstocks; (6) a powerhouse containing two generators with a total rated capacity of 30,000 kW; (7) the 115-kV, 21.1 mile-long transmissin line; and (8)

appurtenant facilities. The average annual energy output is 97,683,000 kWh.

l. *Purpose of Project:* Energy produced at the project is utilized by the applicant.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C, and D2.

19a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10652–000.

c. *Date Filed:* August 25, 1988.

d. *Applicant:* The Eyak Corporation.

e. *Name of Project:* Power Creek.

f. *Location:* On Power Creek in Sections 3, 4, 5, 8 and 9, Cooper River Meridan near Cordova, Alaska.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(5).

h. *Applicant Contact:* Mr. Stephen M. Rehnberg, P.O. Box 340, Cordova, AK 99574, (907) 424–7161.

i. *FERC Contact:* Ms. Julie Bernt, (202) 376–1936.

j. *Comment Date:* November 14, 1988.

k. *Competing Application:* Project No. 10524. Date Filed: December 10, 1987.

l. *Description of Project:* The proposed run-of-river project would consist of: (1) A diversion weir at elevation 425 feet; (2) two 72-inch-diameter, 6,350-foot-long penstocks; (3) a powerhouse containing two generating units each with a rated capacity of 5,000 kW; (4) an open channel tailrace; and, (5) a 6.5-mile-long transmission line. Applicant estimates the average annual energy production to be 32 GWh and the cost of the work to be performed under the preliminary permit to be $170,000.

m. *Purpose of Project:* The power produced would be sole to the local power company.

n. This notice also consists of the following standard paragraphs: A8, A10, B, C and D2.

20a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 10660–000.

c. *Date Filed:* September 12, 1988.

d. *Applicant:* Arnold J. Wise.

e. *Name of Project:* Cape Fear River Locks and Dams Nos. 1, 2, and 3 Hydro Project.

f. *Location:* On the Cape Fear River near Fayettsville, Bladen County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16, U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Arnold J. wise, 105 Holly Court, Fuquay-Varina, NC 27526, (919) 552–5559.

i. *FERC Contact:* Ed Lee, (202) 376–5786.

j. *Comment Date:* December 14, 1988.

k. *Description of Project:* The proposed project would consist of three developments that would utilize the existing U.S. Army Corps of Engineers' Cape Fear River Locks and Dams Nos. 1, 2, and 3. The three developments would be: (A) The Lock and Dam No. 1 consisting of a steel penstock, a powerhouse containing two 2,000-kW generating units, a proposed tailrace, a new 2-mile-long, 115-kV transmission line, and appurtenant facilities; (B) the Lock and Dam No. 2 consisting of a steel penstock, a powerhouse containing two 2,000-kW generating units, a proposed tailrace, a new 2.25-mile-long, 115-kV transmission line, and appurtenant facilities; and (C) the Lock and Dam No. 3 consisting of a steel penstock, a powerhouse containing two 2,000-kW generating units, a new 2.5-mile-long, 115-kV transmission line, and appurtenant facilities. The applicant estimates the total installed capacity would be 12,000 kW, and the average annual generation would be 68.1 GWh. The cost of the work to be performed under the permit by the applicant would be $25,000.

l. *Purpose of Project* The applicant anticipates that the power generated will be sold to a nearby utility company.

m. This notice also consists of the following standard paragraphs: A5, A7, A9, B, C, and D2.

Standard Paragraphs

A5. Preliminary Permit

Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit

Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before the specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30 (b)(1) and (9) and 4.36.

A8. Preliminary Permit

Public notice of the filing of the initial preliminary permit application, which has already been given established the due date for filing competing preliminary permit and development applications or notices of intent. Any competing preliminary permit or development application or notice of intent to file a competing preliminary permit or development application must be filed in a response to and in compliance with the public notice of the initial preliminary permit application. No competing applications or notices of intent to file competing applications may be filed in response to this notice. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of Intent

A notice of intent must specifiy the exact name, business address, and telephone number of the prospective applicant, include an unequivocal statement of intent to submit, if such an application may be filed, either (1) a preliminary permit application or (2) a development application (specify which type of application), and be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies Under Permit

A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene

Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the rules of Practice and Procedure, 18 CFR 385.210, 385.211, 385.214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received

on or before the specified comment date for the particular application.

C. Filing and Service of Responsive Documents

Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Dean Shumway, Director, Division of Project Review, Federal Energy Regulatory Commission, Room 203–RB, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D1. Agency Comments

States, agencies established pursuant to federal law that have the authority to prepare a comprehensive plan for improving, developing, and conserving a waterway affected by the project, federal and state agencies exercising administration over fish and wildlife, flood control, navigation, irrigation, recreation, cultural or other relevant resources of the state in which the project is located, and affected Indian tribes are requested to provide comments and recommendations for terms and conditions pursuant to the Federal Power Act as amended by the Electric Consumers Protection Act of 1986, the Fish and Wildlife Coordination Act, the Endangered Species Act, the National Historic Preservation Act, the Historical and Archeological Preservation Act, the National Environmental Policy Act, Pub. L. 88–29, and other applicable statutes. Recommended terms and conditions must be based on supporting technical data filed with the Commission along with the recommendations, in order to comply with the requirement in section 313(b) of the Federal Power Act, 16 U.S.C. § 8251(b), that Commission findings as to facts must be supported by substantial evidence.

All other Federal, state, and local agencies that receive this notice through direct mailing from the Commission are requested to provide comments pursuant to the statutes listed above. No other formal requests will be made. Responses should be confined to substantive issues relevant to the issuance of a license. A copy of the application may be obtained directly from the applicant. If any agency does not respond to the Commission within the time set for filing, it will be presumed to have no comments. One copy of an agency's response must also be sent to the Applicant's representatives.

D2. Agency Comments

Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Dated: October 14, 1988.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24094 Filed 10–18–88; 8:45 am]

BILLING CODE 6716–01–M

[Docket No. TA88–2–63–002]

Carnegie Natural Gas Co.; Compliance Filing

October 14, 1988.

Take notice that Carnegie Natural Gas Company ("Carnegie") on October 7, 1988, tendered for filing the following revised tariff sheets in its FERC Gas Tariff, First Revised Volume No. 1:

Substitute Ninth Revised Sheet No. 47
Second Substitute Ninth Revised Sheet No. 48
Substitute Tenth Revised Sheet No. 47
Substitute Tenth Revised Sheet No. 48

The proposed effective dates are: (a) September 1, 1988, for Substitute Ninth Revised Sheet No. 47 and Second Substitute Ninth Revised Sheet No. 48, and (b) October 1, 1988, for Substitute Tenth Revised Sheet Nos. 47 and 48.

Carnegie states that the revised tariff sheets are being filed in compliance with a Commission Letter Order dated August 24, 1988, and reflect the rates actually put into effect by its pipeline supplier, Texas Eastern Transmission Corporation, on September 1, 1988.

Carnegie states that copies of the filing were served upon Carnegie's jurisdictional customers and interested state regulatory commissions.

Any person desiring to be here or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88–24097 Filed 10–18–88 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–187–005]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 14, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 7, 1988, tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1, to be effective September 22, 1988:

Fifteenth Revised Sheet No. 16B
Fifth Revised Sheet No. 16B1
Fifth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets relate to Columbia's previous filings in Docket No. RP88–187 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to supplement its earlier filings to permit it to flowthrough additional take-or-pay and contract reformation costs to be billed to it by Texas Gas Transmission Corporation in Docket No. RP88–230, relating to costs to be incurred by Texas Gas from Tennessee Gas Pipeline Company, and by Texas Eastern Transmission Corporation in Docket No. RP88–80, relating to costs to be incurred by Texas Eastern from Southern Natural Gas Company.

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88–187–000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union

Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24098 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP88-187-004]

Columbia Gas Transmission Corp.; Proposed Changes in FERC Gas Tariff

October 14, 1988.

Take notice that Columbia Gas Transmission Corporation (Columbia) on October 7, 1988 tendered for filing the following proposed changes to its FERC Gas Tariff, Original Volume No. 1:

To Be Effective June 4, 1988
Second Substitute Second Revised Sheet No. 68
To Be Effective August 1, 1988
Fourteenth Revised Sheet No. 16B
Fourth Revised Sheet No. 16B1
Fourth Revised Sheet No. 16B2

Columbia states that the foregoing tariff sheets relate to Columbia's June 3, 1988 filing in Docket No. RP88-187-000 in which Columbia established procedures pursuant to Order No. 500 to recover from its customers the take-or-pay and contract reformation costs billed to Columbia by its pipeline suppliers. Specifically, Columbia proposes to:

(A) Supplement its earlier filings to permit it to flowthrough additional take-or-pay and contract reformation costs to be billed to it by Texas Eastern Transmission Corporation (Texas Eastern) in Docket No. RP88-223 relating to costs to be incurred by Texas Eastern from its pipeline supplier, Southern Natural Gas Company.

(B) Revise section 25.1 of the General Terms and Conditions of Columbia's FERC Gas Tariff, Original Volume No. 1, pursuant to the Federal Energy Regulatory Commission's August 26, 1988 Order in Docket No. RP88-187-000. The Commission's order directed Columbia to delete from section 25.1 references to "transportation" rate schedules and "volumetric commodity surcharges" that were applicable only to a previously deleted section 25.3 relating to a "volumetric commodity surcharge recovery mechanism".

Copies of the filing were served upon Columbia's jurisdictional customers and interested state commissions and to each person designated on the official service list compiled by the Commission's Secretary in Docket No. RP88-187-000.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, Union Center Plaza Building, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24099 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP87-93-000]

Columbia Gas Transmission Corp.; Motion for Extension of Limited Authority to Waive Penalty Charges Applicable to Seasonal Takes

October 14, 1988.

Take notice that on October 4, 1988, Columbia Gas Transmission Corporation (Columbia) filed a motion for extension of limited authority to waive penalty charges applicable to seasonal takes. Columbia requests that the waiver previously granted by the Commission be extended through October 31, 1989, 41 FERC ¶61,282 (1987).

Columbia states that an excess supply of 565 MMDth exists on its system. Columbia points out that waiver of the penalty charges of $5.00 per Dth for purchases in excess of SE levels up to 103 percent of SE levels and $10.00 per Dth for any additional purchases would enhance its ability to increase its sales of gas, thereby enabling it to avoid exposure to take-or-pay liability associated with this excess supply and to purchase increased quantities of lower cost gas.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1987)). All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24100 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER88-549-000]

Dayton Power and Light Co.; Filing

October 13, 1988.

Take notice that on September 15, 1988, Dayton Power and Light Company (DP&L) tendered for filing amended cost support relating to Unit Participation Cost Analysis. DP&L states in this filing that it is renewing its request for a waiver of notice requirements so that the filing may become effective October 1, 1988.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceedings. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24101 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 3865-023]

Guadalupe-Blanco River Authority; Dismissing Request for Rehearing

October 14, 1988.

On June 2, 1988, Guadalupe-Blanco River Authority (GBRA) filed an application for amendment of its license

for the Canyon Lake Project No. 3865.[1] GBRA stated that it had entered into an interconnection agreement with New Braunfels Utilities (NBU), Pedernales Electric Cooperative, Inc. (PEC), and Lower Colorado River Authority (LRCA) which eliminated the need for a proposed 12-mile-long transmission line included as part of the licensed project works by Ordering Paragraph (B)(2)(g) of the license. On June 20, 1988, the Director, Division of Project Compliance and Administration (Director), issued an order amending the license by eliminating the transmission line in favor of an interconnection with an existing (PEC) transmission line located adjacent to the powerhouse.[2]

On July 19, 1988, Canyon Lake Area Citizens Association (CLACA), an intervenor in the license proceeding, filed an appeal of the Director's order.[3] The Commission did not act upon CLACA's appeal within 30 days of its filing, and it therefore was deemed denied by operation of law pursuant to Rule 1902(c) of the Commission's Rules of Practice and Procedure, 18 CFR 385.1902(c) (1988), on August 18, 1988.

On September 12, 1988, CLACA filed a pleading styled as a "Complaint and Subsequent Statement of Fact," repeating the arguments from its July 19, 1988 appeal and contending that the Commission erred by not responding to that appeal. CLACA's pleading is in fact a request for rehearing of the denial of its appeal by operation of law and will be treated as such.

The Commission has ruled that it will not entertain appeals, and hence requests for rehearing, of non-material post-license amendment orders.[4] GBRA's application for amendment requested that it not be required to construct a project work no longer necessary for the operation of the project, and therefore is nonmaterial. Accordingly, CLACA's request for rehearing of the Director's June 20, 1988 order is dismissed.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24105 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[1] The license was issued on December 4, 1986. *See* 37 FERC ¶ 61,208 (1987), *reh'g denied*, 42 FERC ¶ 61,079 (1988).

[2] *See* 43 FERC ¶ 62,333 (1988).

[3] In its appeal, CLACA argued that the Commission lacks authority under section 202 of the Federal Power Act (FPA), 16 U.S.C. 824a (1982), to order interconnection on Project No. 3865. Section 202 gives the Commission authority to order certain interconnections in the public interest and in cases of emergency. However, GBRA's application was not filed pursuant to section 202; GBRA sought to amend a license issued pursuant to section 4(e) of the FPA, 16 U.S.C. 797(e) (1982). Therefore, section 202 has no relevance to this proceeding. The Director's June 20, 1988 order imposes no obligation on PEC to interconnect with GBRA.

CLACA also stated that PEC had not signed an agreement with GBRA as of the date of its filing. GBRA submitted as part of its application for amendment of license a copy of its agreement with PEC, NBU, and LCRA. Although the filed copy was not signed by PEC or any other party to the agreement, nothing in the record suggests that the agreement will not be executed. Should GBRA be unable to make final its proposed agreement to interconnect with PEC adjacent to the powerhouse, it will have to file an application to amend its license to add the transmission line necessary to reach the point of agreed interconnection.

[4] *See e.g.*, Northwest Power Company, Inc., 43 FERC ¶ 61,091 (1988); Goose Creek Hydro Associates, 40 FERC ¶ 61,279 (1987); Kings River Conservation District, 36 FERC ¶ 61,365 (1986). Furthermore, CLACA's status as an intervenor in the licensing proceeding for Project No. 3865 does not carry over to post-license filings. That the Public Utility Commission of Texas (PUC) has ruled that CLACA is a party to proceedings before the PUC involving GBRA as alleged by CLACA has no bearing on intervenor status before this Commission. Therefore, CLACA's request for rehearing, not preceded or accompanied by an intervenor petition, will not be entertained. *See Kings Rivers, supra.*

[Docket Nos. TA88-2-15-002 and TM89-1-15-001]

Mid Louisiana Gas Co.; Proposed Changes in FERC Gas Tariff

October 14, 1988.

Take notice that Mid Louisiana Gas Company (Mid Louisiana) on October 6, 1988, tendered for filing as part of First Revised Volume No. 1 of its FERC Gas Tariff the following tariff sheets to be effective September 1, 1988;

Sheet No.	Superseding
Revised Substitute Sixty-Fourth.	Substitute Sixty-Fourth.
Revised Sheet No. 3a.	Revised Sheet No. 3a.
Substitute Sixty-Fifth Revised.	Sixty-Fifth Revised.
Sheet No. a	3Sheet No. 3a.

Mid Louisiana states that the purpose of the filing of the Tariff Sheets is make corrections with regard to amounts contained in Account No. 191 in compliance with the Commission's Order issued August 25, 1988.

Copies of this filing have been mailed to Mid Louisiana's jurisdictional customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with sections 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211, 385.214). All such motions or protests should be filed on or before October 21, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any persons wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24102 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TC88-16-000]

North Penn Gas Co.; Tariff Filing

October 14, 1988.

Take notice that on September 30, 1988, North Penn Gas Company (Applicant), 76-88 Mill Street, Port Allegheny, Pennsylvania 16743, filed in Docket No. TC88-16-000, Sixth Revised Sheet No. 12K and Third Revised Sheet No. 12M to its FERC Gas Tariff, First Revised Volume No. 1, pursuant to § 281.204(b) of the Commission's Regulations which requires interstate pipelines to update their indices of entitlements annually to reflect changes in priority 2 entitlements (Essential Agricultural Users) Specifically, the revised tariff sheets reflect the elimination from North Penn's Index of Entitlements of all requirements for Corning Natural Gas Corporation (Corning). The sales service agreement North Penn served Corning under expired November 1, 1987, and CNG Transmission Corporation has since replaced North Penn as Corning supplier.

Any person desiring to be heard or to make any protest with reference to said tariff sheet filing should on or before October 24, 1988, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to

intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24104 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-1-000]

Northwest Pipeline Corp.; Request for Extraordinary Relief

October 13, 1988.

Take notice that on October 6, 1988, Northwest Pipeline Corporation ("Northwest") filed a proposal for the one-time direct assignment and billing of (1) the portion of its December 31, 1987 deferred purchased gas cost balance which remains unrecovered at September 30, 1988, and (2) the amount of deferred commodity purchased gas costs accumulated during the period January 1 through September 30, 1988. The assignment would be based on the ratio of each customer's purchases to the total purchases by all jurisdictional sales customers during each period. Northwest also tendered Forty-Fifth Revised Sheet No. 10 to its FERC Gas Tariff, First Revised Volume No. 1, reflecting the elimination of the current surcharge adjustment effective October 1, 1988.

Northwest states that it is proposing direct assignment and billing of unrecovered purchased gas costs in order to allow it to continue sales service subsequent to its acceptance of a permanent open access certificate without being burdened by unrecovered purchased gas costs accumulated prior to open access and to assure that sales customers bear their appropriate cost responsibility for gas purchased from Northwest.

Northwest states that a copy of this filing has been served on all jurisdictional sales customers and affected state regulatory commissions.

Any person desiring to be heard or protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before October 20, 1988. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 88-24103 Filed 10-18-88; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-3464-5]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and is available to the public for review and comment. The ICR describes the nature of the information collection and its expected cost and burden, and includes the actual data collection instrument. Because EPA is asking for expedited review of this ICR, the data collection instrument is also published as part of this notice.

FOR FURTHER INFORMATION CONTACT: Carla Levesque at EPA, (202) 382-2740.

SUPPLEMENTARY INFORMATION:

Office of Research and Development

Title: Integrated Air Cancer Project Survey (EPA ICR #1486).

Abstract: Households will be asked to provide information on their home heating fuel usage. The data collected will be used to examine the relationship between indoor air pollution and human cancer. Response is voluntary.

Burden Statement: The estimated public reporting burden for this collection of information is 0.4 hours per respondent, per year. This estimate includes an initial telephone interview, completing a questionnaire, and some monitoring followup.

Respondents: Households.

Estimated No. of Respondents: 632.

Frequency of Collection: 2 responses per year.

Total Estimated Annual Burden: 466.

Survey Instrument: (Published for the purpose of expedited review):

Respondents will be asked to complete the questionnaire that follows.

Residential Air Quality Questionnaire

A. The first series of questions I am going to ask are about the general construction of your home.

1. Which one of the following best describes the style of your house? (Circle One.)

01 Single-Family Detached House
02 Duplex
03 Townhouse/Rowhouse
04 Mobile Home
05 Apartment Building
06 Don't Know

2. In what year was your home built?

_____year
94 Don't Know

3. Which one of the following best describes the number of stories in your home?

01 One Story
02 One and One-Half Stories
03 Two Stories
04 Three or More Stories
05 Don't Know

4. Which of the following best describe the structural makeup of your home? (Circle All That Apply.)

01 Adobe
02 Brick
03 Wood Frame
04 Log
05 Natural Stone
06 Poured Concrete
07 Concrete Block
08 Experimental Material
09 Aluminum/Vinyl Siding
10 Other (Specify)———
94 Don't Know

5. What percentage of your home rests on one or more of the following?

	Percent
Basement	
Crawl Space	
Slab-on-Grade	
(Must Total)	100

6. Are the following parts of the House insulated?

Floors?	——Yes	——No
Exterior Walls?	——Yes	——No
Attic or Roof?	——Yes	——No

7. Does your house qualify for the residential conservation rate from your power company?

01 Yes
02 No
03 Not Available in our Area
94 Don't Know

B. The next series of questions I am going to ask are about the interior of your home.

8. Please tell me which of the following types of floors or floor coverings are present in your home. (Circle All That Apply.)

01 Carpet or Rug
02 Linoleum or Vinyl Sheet on Tile
03 Hardwood Floor
04 Ceramic or Wood Tile
05 Other (Specify)———
94 Don't Know

9. How many feet of floor space did you heat between last November and March?

———square feet
94 Don't Know

10. Does your home have one or more central or window/wall air conditioning (AC) units that cool the house?

01 Yes→Go to Q. 11
02 No→Go to Q. 12

11. How many separate central AC or window/wall units do you have in your home?

a. ———number of central AC units
b. ———number of window/wall units

12. Does your home have a thermostatically controlled system or systems which heat the entire house?

01 Yes→Go to Q. 13
02 No→Go to Q. 14

13. Is the thermostat an energy saving or setback thermostat?

01 Energy saving
02 Setback thermostat

14. Which one of the following fuels is the primary fuel used by your heating system(s)? (Circle One.)

01 Electricity
02 Natural Gas
03 Propane
04 Kerosene
05 Fuel Oil
06 Coal or Coke
07 Wood
08 Other (Specify)———

Note: If fuel oil is used, please ask questions in Section E and F.

15. Which one of the following best describes the method of heat distribution used in your primary heating system(s)? (Circle one.)

01 Forced Air
02 Hot Water/Steam/Radiator
03 Radiant
04 Baseboard
05 Other (Specify) ———
94 Don't Know

16. Do you use any kerosene heaters to provide heat?

01 Yes—Go to Q. 17
02 No—Go to Q. 19
94 Don't Know—Go to Q. 19

17. Are the kerosene heaters vented to the outside of the house?

01 Yes
02 No
94 Don't know

18. Do your kerosene heaters have catalytic converters?

01 Yes
02 No
94 Don't know

19. During the heating season (November through February) on average, how many hours per day do you use the kerosene heater?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

20. Do you have a woodstove or fireplace insert?

01 Yes—Go to Q. 21
02 No—Go to Q. 24
94 Don't Know—Go to Q. 24

21. Does your wood stove or fireplace insert have a catalytic converter?

01 Yes
02 No
94 Don't know

22. Does your wood stove or fireplace insert have an optional air intake which provides air for burning the wood from outside the house?

01 Yes
02 No
94 Don't know

23. During the heating season (November through February) on average, how many hours per day do you use the wood stove or fireplace insert?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

24. Do you have wood-burning or gas-burning fireplace?

01 Yes—Go to Q. 25
02 No—Go to Q. 27
94 Don't Know—Go to Q. 27

25. Does your fireplace have an optional air intake which provides air from outside the house?

01 Yes
02 No
94 Don't know

26. During the heating season (November through February) on average, how many hours per day do you use the fireplace?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

27. Do you have a coal-burning stove?

01 Yes—Go to Q. 28
02 No—Go to Q. 30
94 Don't Know—Go to Q. 30

28. Does your coal-burning stove have a catalytic convertor?

01 Yes
02 No
94 Don't know

29. Does your coal-burning stove have an optional air intake which provides air for burning the coal from outside the house?

01 Yes
02 No
94 Don't know

30. Some homes are equipped with active or passive solar heating systems, or may use a heating method which we have not asked about. Are there any other devices, appliances, or methods which you use to heat your home?

01 Yes (Specify) ———
02 No
94 Don't know

31. Does your heating system also supply your hot water?

a. Yes
b. No
c. Don't Know

32. Do you have a gas-cooking appliance?

01 Yes—Go to Q. 33
02 No—Go to Q. 35
94 Don't Know—Go to Q. 35

33. What type of gas fuel does this appliance use?

01 Propane/bottled/liquified gas
02 Natural
03 Don't Know

34. During the heating season (November–February) on average how many hours each day do you use a gas cooking appliance?

On Weekdays (Monday–Friday) ——
On Weekends (Saturday–Sunday) ——

35. I would like to ask about particular methods you may use to prepare meals during the week. As I read each method, tell me how many hours each week you normally use that method of cooking. Please also tell me whether or not you use an exhaust hood or vent when cooking by that method, and the type of fuel used, eg., gas or electricity.

(READ EACH METHOD ALOUD AND RECORD THE NUMBER OF HOURS PER WEEK THAT EACH METHOD IS USED. IF AN EXHAUST HOOD OR VENT IS USED, PLACE A CHECK MARK IN THAT COLUMN.)

Preparation method	Hours per week	Use hood/ vent	Type of fuel
Frying			
Broiling			
Grilling			
Braising			
Toasting			
Roasting			
Baking			

C. The next few questions pertain to motor vehicles and garages.

36. Does your home have an attached garage? (Do not include carports)

01 Yes—Go to Q. 37
02 No—Go to Q. 38

37. I would like to ask how many cars, trucks, and motorcycles are owned by members of your household and about the type of fuel that each vehicle uses.

(PLACE A CHECK IN THE APPROPRIATE SPACE UNDER EACH TYPE OF VEHICLE OWNED INDICATING THE TYPE OF FUEL USED. BE SURE TO ASK ABOUT MORE THAN ONE VEHICLE OF THE SAME TYPE.)

Type of Fuel	Type of Vehicle						
	Car #1	Car #2	Car #3	Truck #1	Truck #2	Cycle #1	Cycle #2
Leaded Gasoline							
Unleaded Gasoline							
Diesel							
Other							

(Specify Other Fuel, If used:————————————)

D. The next section asks a few more general questions about your house, the inhabitants, and your use of household chemicals.

38. Do any children (aged 18 and under) live in the house?

01 Yes—> Go to Q. 39
02 No—> Go to Q. 40

39. How many children who live in the house are: (Record the Number of Children in each Age Range in the Indicated Space.)

01 Five years old or less?———
02 6 to 14 years old?———
03 15 to 18 years old?———

40. Do you have an indoor pet?

01 Yes—> Go to Q. 41
02 No—> Skip to Q. 42

41. Check types of pets you have?

Cats ————————————
Dogs ————————————
Other (Specify:———

42. Did anyone smoke any tobacco products in your home during the last seven days?

01 Yes—> Go to Q. 43
02 No—> Skip to Q. 44
94 Don't Know—>Skip to Q. 44

43. Which of the following types of tobacco products were smoked?

01 Cigarettes
02 Cigars
03 Pipes
94 Don't Know

Distillate Fuel Oil Heating Equipment Survey

E. The last two sections pertain to specific questions about your oil heating equipment. If necessary, I will be happy to assist you in filling out this information by locating the manufacturer's identification located on the heater.

44. Who is the furnace/boiler manufacturer and what is the model name or number?

a.————
b. Don't Know

45. What is the rating of the furnace/boiler in BTU?

a.————
b. Don't Know

46. Approximately when was the furnace/boiler purchased?

a. Year————
b. Don't Know.

47. Who is the burner manufacturer and model number or name?

a. Specify——
b. Don't Know.

48. What is the burner firing rate in gallons per hour? Circle appropriate number.

a.
0.50 0.60 0.65 0.75 0.85 0.90 1.00
1.10 1.20 1.25 1.35 1.50 1.65 1.75 2+
b. Other. Specify——
c. Don't Know.

49. The burner is:

a. Original
b. Replacement
c. Don't Know

50. If a replacement burner, approximately when was it purchased?

a. Month—— Year——
b. Don't Know.

51. What is the approximate date of the last burner tune-up?

a. Month—— Year——
b. Don't Know.

52. What is the approximate frequency of tune up?

a. Once per heating season.
b. Once every 2 years.
c. Over 5 years.
d. Never.
e. Don't Know.

F. Heating Oil Information

53. Who is the fuel oil supplier?

a. Specify———
b. Don't Know.

54. What fuel type do you use?

a. Kerosene
b. #2 Oil
c. #3 Oil
d. Don't Know.

55. What type of fuel feed do you have?

a. Gravity
b. Pump
c. Don't Know.

56. Have you had any of the following problems with the heating system?

a. Clogged nozzle
b. Fumes
c. Water in fuel tank
d. Other. Specify——
e. Don't Know.

57. What was your oil usage or cost for fuel oil last year?

	Gallons or Dollars
a.	☐
b. Don't Know.	

58. Do you have an oil-fired hot water heater?

a. Yes
b. No
c. Don't know.

Send comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden, to: Carla Levesque, Environmental Protection Agency, Information Policy Branch (PM–223), 401 M St. SW Washington, DC 20460, and Nicolas Garcia, Office of Management and Budget, Office of Information and Regulatory Affairs, 726 Jackson Place NW, Washington, DC 20503 (Telephone (202) 395–3084).

Date: October 13, 1988.

Paul Lapsley,

Director, Information and Regulatory Systems Division.

[FR Doc. 88–24119 Filed 10–18–88; 8:45 am]
BILLING CODE 6560–50–M

[FRL–3464–8]

Science Advisory Board; Environmental Health Committee Halogenated Organics Subcommittee Open Meeting

Under Pub. L. 92–463, notice is hereby given that a two-day meeting of the Drinking Water Subcommittee of the Environmental Health Committee of the Science Advisory Board will be held on November 9–10, 1988, at the Capitol Hill Hotel, 200 C Street, SE., Washington, DC, 20003. The meeting will be held from 9:00 a.m. to 5:00 p.m. on November 9th and 10th.

The purpose of this meeting is to review risk assessment of complex chemical mixtures in drinking water.

The meeting will be open to the public. Any member of the public wishing to make a presentation at the meeting should forward a written statement to Dr. K. Jack Kooyoomjian, Executive Secretary, Science Advisory Board (A–101F)), U.S. Environmental Protection Agency, Washington, DC, 20460, or contact him on (202) 382–2552 by November 2, 1988. The Science Advisory Board expects that the public statements presented at its meetings will not be repetitive of previously submitted written statements. In general, each individual or group making an oral presentation will be limited to a total time of ten minutes.

Dated: October 12, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-24116 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

[FRL-3464-7]

Science Advisory Board Executive Committee; Open Meeting

Under Pub. L. 92-463, notice is hereby given that the Executive Committee of the Science Advisory Board will meet on November 9 from 9:00 a.m. to 5:00 p.m. and on November 10 from 9:00 a.m. to 12 noon in the Administrator's Conference Room 1101, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC.

The purpose of the meeting is to enable the Executive Committee to review SAB Committee reports including the Clean Air Scientific Advisory Committee's report on acid aerosols. The Environmental Health Committee's reports on: The analytical methodology relating to the regulation of drinking water contaminants involved in Phase II draft regulations; the issues relating to the regulation of lead in drinking water; and the treatment technology relating to the regulation of drinking water contaminants involved in Phase II draft regulations. The Radiation Advisory Committee's reports on the Office of Radiation Program's plans to revise the sources and transport sections of the background information document supporting a revised radionuclides NESHAP. The Environmental Engineering Committee's resolution on mathematical modelling of environmental processes, and a report from the investigative group on hazardous waste incineration will be discussed. The Executive Committee will receive briefings by Agency personnel on the vinyl chloride decision, plans for updating risk assessment guidelines and media-specific documents on environmental models. Tentative plans for SAB activities in FY 1989 will also be discussed.

The meeting is open to the public. Any member of the public wishing to attend should notify Joanna Foellmer or Dr. Donald G. Barnes, Director, Science Advisory Board, at 202-382-4126 by November 2, 1988.

Date: October 14, 1988.

Donald G. Barnes,

Director, Science Advisory Board.

[FR Doc. 88-24117 Filed 10-18-88; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

[DA-88-1602]

Revisions to the Average Schedules Proposed by the National Exchange Carrier Association, Inc.

Released: October 13, 1988.

1. On October 3, 1988, the National Exchange Carrier Association, Inc. ("NECA") filed revisions to the interstate average schedules that, under NECA's proposal, would become effective January 1, 1989.

2. Under NECA's proposal the following average schedule formulas would be in effect during 1989:

(A) *Common Line Basic Formula.*

(1) For access lines per exchange less than 385.55, the settlement per access line per month would be: $12.982078—($.015532 x Access Lines Per Exchange).

(2) For access line per exchange greater than or equal to 385.55, the settlement per access line per month would be $6.993457.

(B) *Traffic Sensitive Central Office.*

The settlement per minute per month would be $.030216 + ($191.497493/Minutes Per Exchange).

(C) *Intertoll Switching (B6).*

The settlement per month per trunk would be $29.18.

(D) *Line Haul Switched Circuit Termination (Non-Distance Sensitive)*

The settlement per month would be $34.05 per termination.

(E) *Line Haul Facility (Distance Sensitive).*

The settlement per month would be ($1.165293 x Interstate Circuit Miles) + ($0.001554 x TS Minutes per month).

(F) *Special Access.*

Settlement = .939959 x Revenues.

(G) *CABS & Administrative.*

Settlement = $385.90 + ($.000486 x TS Minutes).

3. NECA has also proposed a two year transition plan that NECA states would be applicable to companies that would be expected to experience reductions in settlements in excess of specified monthly amounts as a consequence of the revisions that NECA has proposed. According to NECA,

> [t]ransition payments would be determined by comparing individual company total settlements for the first nine months of 1988 [1] to individual company total settlements computed using the 1988 demand volumes reported to NECA for the same period with the proposed 1989 fomulas. Beginning with implementation of the schedules, monthy transition payments will be paid to an amount equal to this difference reduced progressively each month by the greater of (i) one-twelfth of the average settlement reduction per line experienced by average schedule companies as a whole or (ii) one twenty-fourth of the individual company's per line settlement reduction. In this manner, companies that are expected to experience smaller than average settlement reductions will complete the transition in less than one year. Companies with greater than average settlement reductions would require longer than one year to complete the transition.[2] All companies, however, would complete the transition within the specified two-year period (*i.e.*, 24 months after the schedules go into effect.)[3]

In addition to a more detailed, and extended, discussion of NECA's proposed transition plan, NECA's filing contains information on the development of the proposed revisions, the data that were employed, and the adjustments that were made in response to earlier Commission directives.

4. Persons wishing to examine NECA's "1989 Modificaiton of Average Schedules" filing may do so at Commission Reference Room 544, 1919 M Street, NW., Washington, DC. Copies of NECA's "1989 Modification of Average Schedules" filing may be purchased from International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20036, (202) 857-3800.

5. Because of the length and complexity of NECA's filing, we have decided to provide additional time for the preparation of comments and replies even though the reply comment date extends beyond the January 1, 1989 effective date that NECA has proposed. As a consequence, persons wishing to comment on NECA's proposed revisions to the average schedules, NECA's proposed transition plan, or any other aspect of NECA's filing, may do so by filing comments on or before December 14, 1988 and reply comments, on or before January 13, 1989. Copies of each

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[1] "Exclusive of Universal Service Fund (USF) settlements, ARPM Transition payments and non CABS and access administration supplemental disbursements such as the reimbursement for Part 32 implementation." *See* NECA's proposed "1989 Modification of Average Schedules" at I-22, n. 15.

[2] NECA amplifies on its proposed transition by stating: "if the average per line settlement reduction is $1.50, a company expected to experience a $1.00 per line reduction would complete the transition in 8 months ($1.00 per line reduced each month by 1/12 of the average reduction of $1.50). A company expected to experience a per line reduction of $1.75 would require 14 months to complete transition. Companies expected to experience settlement reductions greater than twice the average (*ie.*, more than $3.00 per line) would complete the transition in 24 months, with transition settlements reduced each month in equal 1/24 increments." *Id.* at n. 16.

[3] *Id.* at I-22.

comment and reply comment should be filed in the following manner: (1) Five (5) copies should be filed with the Secretary, Federal Communications Commission, 1919 M St., NW., Washington, DC 20554; (2) three (3) copies should be filed with the Policy and Program Planning Division, Room 544, 1919 M St., NW., Washington, DC 20554; (3) comments and replies should be captioned "In the Matter of Revisions to the Average Schedules proposed by NECA on October 3, 1988."

(6) For further information contact Kent Nilsson, (202) 632-6363.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24087 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

Advisory Committee on Advanced Television Service; Schedule of Meetings

October 5, 1988.

The following schedule is based on information available as of noon Tuesday, October 4, 1988. Meetings of Advisory Groups and Working Parties may be changed without advanced public notice. Interested parties should contact the appropriate Chairmen and Vice Chairmen if further information is desired. (New meetings highlighted).

IS/WP2 Transition Scenarios

Wednesday, October 5/11:30 a.m., EIA Building, 1722 Eye Street, NW.—Suite 20/Washington, DC, Chairman J. Peter Bingham, (317) 267-5033.

SS/WP3 Economic Assessment

Wednesday, October 12/9:30 a.m. Note Date Change, Bellcore, 2101 L. Street, NW./Washington, DC, Suite—600/Rooms B1 & B2, Chairman Larry Thorpe, (201) 833-5261.

IS/Implementation Subcommittee

Thursday, October 13/2:30 p.m. (Please Note Time Change), FCC/1919 M Street, NW./Washington, DC/Meeting Room 856, Chairman James J. Tietjen, (609) 734-2237.

PS/WP3 ATS Spectrum Utilization

Wednesday, October 19/1:30 p.m., NBC Building/30 Rockefeller, Mezzanine Conference Room A, New York, NY, Chairman Dale Hatfield (442-5395).

SS/Systems Subcommittee

Wednesday, October 19/9:00 a.m., New York Telephone Offices/1095 Avenue of the Americas, 23rd Floor/New York, New York, Chairman Irwin Dorros (201-740-3200).

PS/Planning Subcommittee

Monday, October 24/10:00 a.m., FCC, 1919 M Street, NW./Washington, DC/Commission Meeting Room 856, Chairman Joseph A. Flaherty, (212) 975-2213.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 88-24096 Filed 10-18-88; 8:45 am]

BILLING CODE 6712-01-M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Agency Information Collection Submitted to the Office of Management and Budget for Clearance

The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following information collection package for clearance in accordance with the Paperwork Reduction Act (44 U.S.C. Chapter 35).

Type: Extension of 3067-0123

Title: State and Local Emergency Operations Plans.

Abstract: This information collection is necessary to determine the eligibility of State and local governments for participation in the Federal Emergency Management Agency's (FEMA) Emergency Management Assistance program (EMA). EMA provides State and local governments with Federal matching funds designed to assist those governments with the costs associated with their emergency staffs.

Type of Respondents: State and local governments.

Estimate of Total Annual Reporting and Recordkeeping Burden: 105,000.

Number of Respondents: 950.

Estimated Average Burden Hours Per Response: 110.5 hours.

Frequency of Response: Annually.

Copies of the above information collection request and supporting documentation can be obtained by calling or writing the FEMA Clearance Officer, Linda Shiley, (202) 646-2624, 500 C Street, SW., Washington, DC 20472.

Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden, to the FEMA Clearance Officer at the above address; and to Francine Picoult, (202) 395-7231, Office of Management and Budget, 3235 NEOB, Washington, DC 20503, within two weeks of this notice.

Date: October 12, 1988.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 88-24085 Filed 10-18-88; 8:45 am]

BILLING CODE 6718-21-M

FEDERAL RESERVE SYSTEM

First American Bank Corp., et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act 12 U.S.C. 1843(c)(8) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each aplication is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonable be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, sumarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than November 10, 1988.

A. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. *First American Bank Corporation*, Hampshire, Illinois; to engage *de novo*

through its subsidiary, First American Courier Services, Elk Grove Village, Illinois, in the business of providing courier services pursuant to § 225.25(b)(10) of the Board's Regulation Y. These activities will be conducted in the State of Illinois.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. *Smith Associated Banking Corporation,* Little Rock, Arkansas; to engage *de novco* in credit life, accident and health insurance activities directly related to extensions of credits by its subsidiary bank, Stephens Security Bank, Stephens, Arkansas, pursuant to § 225.25(b)(8)(i) of the Board's Regulation Y. These activities will be conducted in the State of Arkansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Western Commerce Bancshares of Carlsbad, Inc.,* Carlsbad, New Mexico; to engage *de novo* through its subsidiary, Bank Consultants, Inc., Carlsbad, New Mexico, in providing management consulting services to depository institutions pursuant to § 225.25(b)(11) of the Board's Regulation Y. These activities will be conducted in the State of New Mexico. Comments on this application must be received by November 4, 1988.

Board of Governors of the Federal Reserve System, October 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24061 Filed 10-18-88; 8:45 am]

BILLING CODE 6210-01-M

First Fidelity Bancorp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than November 8, 1988.

A. **Federal Reserve Bank of Philadelphia** (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. *First Fidelity Bancorporation,* Newark, New Jersey; to acquire 100 percent of the voting shares of Montclair Saving Bank, Upper Montclair, New Jersey.

B. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. *FirstBank Holding Company of Colorado,* Lakewood, Colorado; to acquire 100 percent of the voting shares of FirstBank of Southmoor Park, N.A., in organization, Denver, Colorado; FirstBank at Buckley/Quincy, N.A., in organization, Aurora, Colorado; FirstBank of Table Mesa, N.A., in organization, Boulder, Colorado; FirstBank at 30th/Arapahoe, N.A., in organization, Boulder, Colorado; and FirstBank at Chambers/Mississippi, N.A., in organization, Aurora, Colorado.

2. *Fourth Financial Corporation,* and IV Topeka Acquisition, Inc., both located in Wichita, Kansas; to acquire 100 percent of the voting shares of Fairlawn Plaza Investments, Inc., Topeka, Kansas, and thereby indirectly acquire Fairlawn Plazabank, Topeka, Kansas.

3. *New Mexico Financial Corporation,* Belin, New Mexico; to become a bank holding company by acquiring 100 percent of the voting shares of Ranchers State Bank, Belin, New Mexico.

4. *Whiting Bankshares, Inc.,* Whiting, Kansas; to acquire 100 percent of the voting shares of State Bank of Lancaster, Lancaster, Kansas.

C. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President) 400 South Akard Street, Dallas, Texas 75222:

1. *Parker Bancshares, Inc.,* Dover, Delaware; to become a bank holding company by acquiring 100 percent of the voting shares of Weatherford National Bank, Weatherford, Texas.

D. **Federal Reserve Bank of San Francisco** (Harry W. Green, Vice President) 101 Market Street, San Francisco, California 94105:

1. *1867 Western Financial Corporation,* Stockton, California; to become a bank holding company by acquiring 100 percent of the voting shares of Bank of Stockton, Stockton, California, which engages in insurance activities permissible pursuant to § 225.25(b)(8) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, October 13, 1988.

James McAfee,

Associate Secretary of the Board.

[FR Doc. 88-24062 Filed 10-18-88; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RETIREMENT THRIFT INVESTMENT BOARD

Employee Thrift Advisory Council; Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), a notice is hereby given of the following committee meeting:

Name: Employee Thrift Advisory Council.

Time and Date: 10:00 a.m., November 2, 1988.

Place: Fifth Floor Conference Room, Federal Retirement Thrift Investment Board, 805 Fifteenth Street, NW., Washington, DC.

Status: Open.

Matters to be considered: Approval of the minutes of the July 26, 1988, meeting; report of Executive Director on Thrift Savings Plan (TSP) status; major contract schedule; New Jersey legislation on TSP; legislative agenda; Government Fund investment policy; fiduciary responsibilities; audits; and new business.

Any interested person may attend, appear before, or file statements with the Council. For further information contact John J. O'Meara, Committee Management Officer, on (202) 523-6367.

Date: October 14, 1988.

Francis X. Cavanaugh,

Executive Director.

[FR Doc. 88-24205 Filed 10-18-88; 8:45 am]

BILLING CODE 6710-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 88N-0358]

Drug Export; Lymph-Scan (Kit for the Preparation of Technetium TC-99m, Antimony Trisulfide Colloid)

AGENCY: Food and Drug Administration.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Cadema Medical Products, Inc., has filed an application requesting approval for the export of the product Lymph-Scan (Kit for the preparation of Technetium TC-99m, Antimony Trisulfide Colloid) to Canada.

ADDRESS: Relevant information on this application may be directed to the Dockets Management Branch (HFA-305), Food and Drug Administration, Room 4-62, 5600 Fishers Lane, Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of human drugs under the Drug Export Amendments Act of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Rudolf Apodaca, Division of Drug Labeling Compliance (HFD-310), Center for Drug Evaluation and Research, Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-295-8063.

SUPPLEMENTARY INFORMATION: The Drug Export Amendments Act of 1986 (Pub. L. 99-660) (section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382)) provides that FDA may approve applications for the export of drugs that are not currently approved in the United States. The approval process is governed by section 802(b) of the act. Section 802(b)(3)(B) of the act sets forth the requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Cadema Medical Products, Inc., P.O. Box 250, Middletown, NY 10940, has filed an application requesting approval for the export of a product Lymph-Scan (Kit for the preparation of Technetium TC-99m, Antimony Trisulfide Colloid) to Canada. This product is used as an agent for imaging lymphatic drainage in patients with breast cancer or malignant melanoma. The application was received and filed in the Center for Drug Evaluation and Research on September 27, 1988, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by October 31, 1988, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day review period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802, Pub. L. 99-660 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Drug Evaluation and Research (21 CFR 5.44).

Dated: October 11, 1988.

Sammie R. Young,

Acting Director, Office of Compliance Center for Drug Evaluation and Research.

[FR Doc. 88-24160 Filed 10-18-88; 8:45 am]

BILLING CODE 4160-01-M

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Pub. L. 92-463, notice is hereby given of the meetings of the following study sections for November through December 1988, and the individuals from whom summaries of meetings and rosters of committee members may be obtained.

These meetings will be open to the public to discuss administrative details relating to study section business for approximately one hour at the beginning of the first session of the first day of the meeting. Attendance by the public will be limited to space available. These meetings will be closed thereafter in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92-463, for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301-496-7534 will furnish summaries of the meetings and rosters of committee members. Substantive program information may be obtained from each executive secretary whose name, room number, and telephone number are listed below each study section. Since it is necessary to schedule study section meetings months in advance, it is suggested that anyone planning to attend a meeting contact the executive secretary to confirm the exact date, time and location. All times are a.m. unless otherwise specified.

Study section	November-December 1988 meeting	Time	Locatione
Behavioral and Neurosciences-1, Dr. Anita Sostek, Rm. 303, Tel. 301-496-5352	Nov. 28-29	9:00	Omni Shoreham Hotel, Washington, DC.
Behavioral and Neurosciences-2, Dr. Anita Sostek, Rm. 303, Tel. 301-496-5352	Nov. 21	9:00	Omni Shoreham Hotel, Washington, DC.
Biomedical Sciences-3, Mr. Gene Headley, Rm. A25, Tel. 301-496-7287	Nov. 14-15	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-4, Dr. Charles Baker, Rm. 219, Tel. 301-496-7150	Nov. 2-4	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-5, Dr. Donna Dean, Rm. A27, Tel. 301-496-7600	Nov. 16-18	8:30	Holiday Inn, Bethesda, MD.
Biomedical Sciences-6, Dr. Syed M. Amir, Rm. 326, Tel. 301-496-3117	Nov. 16-18	8:30	Holiday Inn, Georgetown, DC.
Biomedical Sciences-7, Dr. Donna Dean, Rm. A22, Tel. 301-496-1067	Nov. 29-Dec. 1	8:30	St. James Hotel, Washington, DC.
Clinical Sciences-1, Dr. Lynwood Jones, Jr., Rm. A20 Tel. 301-496-7510	Nov. 16-18	8:30	Holiday Inn, Georgetown, DC.
Clinical Sciences-2, Mrs. Jo Pelham, Rm. 319C, Tel. 301-496-7477	Dec. 5-6	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-3, Dr. Nicholas Mazarella, Rm. A27, Tel. 301-496-1069	Nov. 10-11	8:30	Crowne Plaza, Rockville, MD.
Clinical Sciences-4, Mrs. Jo Pelham, Rm. 319C, Tel. 301-496-7477	Nov. 10-11	8:30	Holiday Inn, Bethesda, MD.

(Catalog of Federal Domestic Assistance Program Nos. 13.306, 13.333, 13.337, 13.393–13.396, 13.837–13.844, 13.846–13.878, 13.892, 13.893, National Institutes of Health, HHS)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24074 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the National Heart, Lung, and Blood Institute Board of Scientific Counselors, December 8 and 9, 1988, National Institutes of Health, 9000 Rockville Pike, Building 10, Room 7N214, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 4 p.m. December 8 and from 9:30 a.m. to 12 noon on December 9 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 12 noon to adjournment December 9 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitue a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members. Substantive program information may be obtained from Dr. Jack Orloff, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, Room 7N214, phone (301) 496–2116.

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24064 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 2, 1988, in Building 31, Room 2A52.

This meeting will be open to the public from 9:00 a.m. to 12 noon on December 2 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 2 from 1:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Linda Hall, Committee Management Officer, NICHD, Executive Plaza North, Room 520, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request.

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24068 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Meeting of the Board of Scientific Counselors

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute on Aging, November 29–30, 1988, to be held at the Gerontology Research Center, Baltimore, Maryland. The meeting will be open to the public from 10:00 a.m. on Tuesday, November 29, to 4:00 p.m. and will again be open to the public from 10:00 a.m. on Wednesday, November 30, until 12:00 p.m. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on November 29 from 4:00 p.m. to recess, and again on November 30 from 12:00 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, NIA, including consideration of personnel qualifications and performance, and the competence of individual investigators, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. June C. McCann, Committee Management Officer, NIA, Building 31, Room 5C02, National Institutes of Health, Bethesda, Maryland 20892, (telephone: 301/496–9322) will provide a summary of the meeting and a roster of committee members. Dr. Gunther L. Eichhorn, Acting Scientific Director, NIA, Gerontology Research Center, Baltimore City Hospitals, Baltimore, Maryland 21224, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.886, Aging Research, National Institutes of Health)

Dated: October 6, 1988.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 88–24067 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 1–2, 1988, in Building 31, Conference Room 7, 9000 Rockville Pike, Bethesda, Maryland 20892.

This meeting will be open to the public on December 1 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public on December 1 from approximately 10 a.m. until adjournment on December 2 for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with

the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Peter M. Spooner, Executive Secretary, Heart, Lung, and Blood Research Review Committee A, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7265, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 13.837, Heart and Vascular Diseases Research; 13.838, Lung Diseases Research; National Institute of Health)

Dated: October 6, 1988

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24065 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Institute, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892, on December 1, 1988, in Building 31, Conference Room 9.

This meeting will be open to the public on December 1, 1988 from 8 a.m. to approximately 10 a.m. to discuss administrative details and to hear reports concerning the current status of the national Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C., and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from approximately 10 a.m. to adjournment for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable materials, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Terry Bellicha, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, Room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236, will provide a summary of the meeting and a roster of the committee members.

Dr. Louis M. Quellette, Executive Secretary, NHLBI, Westwood Building, Room 554, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–7915, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program No. 13.837), Heart and Vascular Diseases Research; and 13.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Managment Officer, NIH.

[FR Doc. 88–24066 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

National Eye Institute; Meeting of the Vision Research Review Committee

Pursuant to Pub. L. 92–463, notice is hereby given of the meeting of the Vision Research Review Committee, National Eye Institute, November 17–18, 1988, Conference Room 8, Building 31C, National Institutes of Health, Bethesda, Maryland.

This meeting will be open to the public on November 17 from 8:30 to 9:30 a.m. for opening remarks and discussion of program guidelines. Attendance by the public will be limited to space available.

In accordance with provisions set forth in sections 552b(c)(4) and 552b(c)(6), Title 5, U.S.C. and section 10(d) of Pub. L. 92–463, the meeting will be closed to the public from 9:30 a.m. on November 17 until recess and on November 18 from 8:30 a.m. until adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the application, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Lois DeNinno, Committee Management Officer, National Eye Institute, Building 31, Room 6A/48, National Insitutes of Health, Bethesda, Maryland 20892, (301) 496–9110, will provide summaries of the meeting, rosters of committee members, and substantive program information upon request.

(Catalog of Federal Domestic Assistance Program Nos. 13.867, Retinal and Choroidal Diseases Research; 13.868, Anterior Segment Diseases Research; and 13.871 Strabismus, Amblyopia and Visual Processing; National Institutes of Health.)

Dated: October 6, 1988.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 88–24063 Filed 10–18–88; 8:45 am]

BILLING CODE 4140–01–M

Social Security Administration

Finding Regarding Foreign Social Insurance or Pension System; Venezuela

AGENCY: Social Security Administration, HHS.

ACTION: Notice of finding regarding foreign social insurance or pension system—Venezuela.

Finding: Section 202(t)(l) of the Social Security Act (42 U.S.C. 402(t)(l)) prohibits payment of monthly benefits to any individual who is not a United States citizen or national for any month after he or she has been outside the United States for 6 consecutive months. This prohibition does not apply to such an individual where one of the exceptions described in section 202(t)(2) through 202(t)(5) of the Social Security Act (42 U.S.C. 402(t)(2) through 402(t)(5)) affects his or her case.

Section 202(t)(2) of the Social Security Act provides that, subject to certain residency requirements of section 202(t)(11), the prohibition against payments of section 202(t)(11), the prohibition against payment shall not apply to any individual who is a citizen of a country which the Secretary of Health and Human Services finds has in effect a social insurance or pension system which is of general application in such country and which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits individuals who are United States citizens but not citizens of that country and who qualify for such benefits to receive those benefits, or the actuarial equivalent thereof, while outside the foreign country regardless of the duration of the absence.

The Secretary of Health and Human Services has delegated the authority to make such a finding to the Commissioner of Social Security. The Comissioner has redelegated that authority to the Director of the International Policy Staff. Under that authority the Director of the International Policy Staff has approved a finding that Venezuela, beginning January 1, 1978, has a social insurance system of general application which:

(a) Pays periodic benefits, or the actuarial equivalent thereof, on account of old age, retirement, or death; and

(b) Permits United States citizens who are not citizens of Venezuela to receive such benefits, or their actuarial equivalent, at the full rate without qualification or restriction while outside Venezuela.

Accordingly, it is hereby determined and found that Venezuela has in effect, beginning January 1, 1978, a social insurance system which meets the requirements of section 202(t)(2) of the Social Security Act (42 U.S.C. 402(t)(2)).

This revises our previous finding, published at 34 FR 7666 on May 14, 1969, that Venezuela does not have in effect a social insurance or pension system which meets the requirements of section 202(t)(2) of the Social Security Act because it did not have a system of general application.

FOR FURTHER INFORMATION CONTACT: J. Joseph Rausch, Room 1104, West High Rise Building, 6401 Security Boulevard, Baltimore, MD 21235, (301) 965–3567.

(Catalog of Federal Domestic Assistance Program No. 13.802 Social Security—Disability Insurance; 13.803 Social Security—Retirement Insurance; 13805 Social Security Survivors Insurance)

Dated: October 12, 1988.

Elizabeth K. Singleton,

Director, International Policy Staff.

[FR Doc. 88–24133 Filed 10–18–88; 8:45 am]

BILLING CODE 4190–11–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of Administration

[Docket No. N–88–1880]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: October 13, 1988.

John T. Murphy,

Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Proposal: Specifications of Repairs and Draw Report.

Office: Housing.

Description of the Need for the Information and Its Proposed Use: These forms are used by homebuyers and contractors to provide a work description and cost estimate of the proposed rehabilitation, and to request construction draws for rehabilitation work that has been completed. The forms are submitted to HUD by mortgagees and also used as a certification for those parties involved in the program.

Form Number: HUD–9746 and 9746A.

Respondents: Businesses or Other For-Profit.

Frequency of Submission: On occasion.

Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Specifications of repairs	2,500		1		2.0		5,000
Draw request	2,500		5		1.5		18,750

Total Estimated Burden Hours: 23,750.

Status: New.

Contact: Kenneth L. Crandall, HUD, (202) 755–6720, John Allison, OMB, (202) 395–6880.

Date: October 13, 1988.

Proposal: Single Family Default Monitoring System.

Office: Housing.

Description of the Need for the Information and its Proposed Use: This data is needed to report information into HUD's Single Family Default Monitoring System which tracks and produces various reports containing information on mortgages in default and foreclosure. The forms are submitted by mortgagees and assist HUD in monitoring and evaluating mortgagees' servicing practices.

Form Number: HUD–92068–A and 92068–C.

Respondents: Individuals or Households, Business or Other For-Profit, and Small Businesses or Organizations.

Frequency of Submission: Monthly, Quarterly, and Recordkeeping.

Reporting Burden:

	Number of respondents	× Frequency of response	× Hours per response	= Burden hours
Submission of reports	4,000	16	0.60	38,400
Recordkeeping	4,000	1	1.60	6,400

Total Estimated Burden Hours: 44,800.
Status: Revision.
Contact: Leslie Bromer, HUD, (202) 755–7330, John Allison, OMB, (202) 395–6880.

Date: October 13, 1988.

[FR Doc. 88–24191 Filed 10–18–88; 8:45 am]
BILLING CODE 4210–01–M

[Docket No. N–88–1879]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESS: Interested persons are invited to submit comments regarding these proposals. Comments should refer to the proposal by name and should be sent to: John Allison, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT: David S. Cristy, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 755–6050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Mr. Cristy.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collection of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. Chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total numbers of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Sec. 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; sec. 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Date: October 12, 1988.

John T. Murphy,
Director, Information Policy and Management Division.

Notice of Submission of Proposed Information Collection to OMB

Home Equity Conversion Mortgage Insurance Demonstration (FR–2481)

Office: Policy Development and Research.
Description of the Need for the Information and its Proposed Use: Mortgagees participating under the Home Equity Conversion Mortgage Insurance Demonstration are required to provide mortgagors with an annual statement regarding the mortgage activity for each calendar year. Mortgagors need this information for tax purposes.
Form Number: None.
Respondents: Individuals or Households and Businesses or Other For-Profit.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	× Frequency of response	× Hours per response	= Burden hours
Disclosure statement	2,906	1	1	2,906

Total Estimated Burden Hours: 2,906.
Status: New.
Contact: Judith V. May, HUD (202) 755–5426, John Allison, OMB, (202) 395–6880.

Date: October 12, 1988.

Comprehensive Improvement Assistance Program (CIAP): Reporting/Monitoring

Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: This information will be needed for reporting/monitoring requirements. That are necessary for PHA's administration of approved CIAP programs. The information will be used to satisfy HUD's review and monitoring responsibilities.
Form Number: HUDS–52826 and 53001.
Respondents: Non-Profit Institutions.
Frequency of Submission: On Occasion and Quarterly.
Reporting Burden:

	Number of respondents	x Frequency of response	x Hours per response	= Burden hours
Schedule/report of modernization expenditures	1,110	4	1.5	6,600
Narrative report	300	4	1.5	1,800
Request for proposal	200	1	2.0	400
Actual modernization cost	400	1	1.0	400

Total Estimated Burden Hours: 9,200.
Status: Reinstatement.
Contact: Pris P. Buckler, HUD, (202) 755–6640, John Allison, OMB, (202) 395–6880.

Date October 12, 1988.

Public Housing Comprehensive Improvement Assistance Program (CIAP) and Comprehensive Grant Program (FR–2488)

Office: Public and Indian Housing.
Description of the Need for the Information and its Proposed Use: HUD needs this information to review documentation provided by PHAs with 500 units or more, describing their physical and management needs, their annual activities planned, and their actual use of assistance under the Comprehensive Grant Program. HUD will use this information to review and monitor statutory requirements.
Form Number: None.
Respondents: Individuals or households and State or Local Governments.
Frequency of Submission: Annually.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Comprehensive plan	378		1		30.0		11,340
Annual statement	378		1		8.0		3,024
Fund requisitions	378		20		.5		3,780
Fiscal closeout	378		1		1.0		378
Performance and evaluation report	378		1		5.0		1,890

Total Estimated Burden Hours: 20,412.
Status: New.
Contact: Mary T. Schulhof, HUD, (202) 755–6640, John Allison, OMB, (202) 395–6880.

Date: October 12, 1988.

Certification Regarding Adjustment for Damage or Neglect Pursuant to 203.379(c)

Office: Housing.
Description of the Need for the Information and its Proposed Use: This information is needed for documentation purposes by the mortgagees to support their certification that they are entitled to convey a fire-damaged property without penalty to the claim for insurance benefits.
Form Number: None.
Respondents: Business or Other For-Profit.
Frequency of Submission: On Occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Documentation	280		1		0.5		140

Total Estimated Burden Hours: 140.
Status: Extension.
Contact: Theodore Green, HUD (202) 755–6672, John Allison, OMB, (202) 395–6880.

Date: October 5, 1988.

Lead-Based Paint Poisoning Prevention Requirements—Proposed Rule, Section 202 Housing for Nonelderly Handicapped Families (FR–2476)

Office: Housing.
Description of the Need for the Information and its Proposed Use: This information collection requires sponsors of Section 202 projects that rehabilitate pre-1978 housing in which children reside to notify tenants of potential lead-based paint hazards. The sponsors are also required to retain records of pre-occupancy inspections and any subsequent testing of surfaces.
Form Number: None.
Respondents: Non-Profit Institutions.
Frequency of Submission: On occasion.
Reporting Burden:

	Number of respondents	x	Frequency of response	x	Hours per response	=	Burden hours
Notification	10		20		0.10		20
Recordkeeping	10		1		.10		1

Total Estimated Burden Hours: 21.
Status: New.
Contact: Margaret Milner, HUD, (202) 755–6742, John Allison, OMB, (202) 395–6880.

Date: October 5, 1988.

[FR Doc. 88–24195 Filed 10–18–88; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–88–887]

Organization, Functions, and Authority Delegations; Sacramento

AGENCY: Department of Housing and Urban Development.

ACTION: Designation and order of succession.

SUMMARY: The Manager of the Sacramento Office in Region IX is designating Officials who may serve as Acting Manager during the absence, disability or vacancy in the position of Manager.

EFFECTIVE DATE: September 26, 1988.

FOR FURTHER INFORMATION CONTACT: Beverly G. Agee, Regional Counsel, Department of Housing and Urban Development, Region IX, 450 Golden Gate Avenue, Box 36003, San Francisco,

CA 94102. Telephone (415) 556–6110. This is not a toll-free number.

Designation of Acting Manager: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability or vacancy in the position of Manager, with all the powers, functions, and duties redelegated or assigned to the Manager:

Provided, that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unable to act by reason of absence, disability, or vacancy in said position:

1. Deputy Manager
2. Director, Housing Development
3. Director, Housing Development
4. Chief Attorney
5. Chief, Multifamily Loan Management
6. Chief, Assisted Housing Management
7. Chief, Architecture & Engineer/Cost Branch
8. Chief, Mortgage Credit
9. Chief, Valuation
10. Chief, Single Family Loan Management and Property Disposition

This designation supersedes and cancels any previous designation, published or unpublished, that may be in effect prior to the effective date of this document.

Authority: Delegation of Authority by the Secretary of Housing and Urban Development effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: September 26, 1988.

Anthony A. Randolph,

Manager, Sacramento Office, Department of Housing and Urban Development, Region IX.

Concur:

Robert J. De Monte,

Regional Administrator-Regional Housing Commissioner Region, Region IX.

[FR Doc. 88–24196 Filed 10–18–88; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Office of the Secretary

Privacy Act of 1974; Revision and Deletion of Notices of Systems of Records

Pursuant to the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a), notice is hereby given that the Department of the Interior is deleting two, and revising three notices describing systems of records maintained by the Office of Historically Black College and University Programs and Job Corps in the Office of the Secretary. Except as noted below, all changes being published are editorial in nature, and reflect organization changes and other administrative revisions which have occurred since the publication of the material in the **Federal Register** on September 26, 1986 (51 FR 34262). The three revised notices are published in their entirety below.

Two notices are being deleted from the Department's inventory of Privacy Act systems of records notices, because the records are no longer maintained by the Office of Historically Black College and University Programs and Job Corps. There are:

1. INTERIOR/OS–30; Biweekly Labor List by Organization—Interior, OS–30; previously published in the **Federal Register** on September 26, 1986 (51 FR 34264).

2. INTERIOR/OS–31; Job Corps Financial Records—Interior, OS–31; previously published in the **Federal Register** on September 26, 1986 (51 FR 34264).

Since these changes do not involve any new or intended use of the information in the systems of records, they shall be effective on or before October 19, 1988. Additional information regarding these revisions may be obtained from the Department Privacy Act Officer, Office of the Secretary (PMI), Room 2242, Main Interior Building, U.S. Department of the Interior, Washington, DC 20240.

Dated: October 6, 1988.

Oscar W. Mueller, Jr.,

Director, Office of Management Improvement.

INTERIOR/OS–25

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee Records—Interior, Office of the Secretary—25.

SYSTEM LOCATION:

Pertinent Federal Records Center, National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enrollees (YCC) of USDI Federal YCC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) Current enrollee USDI Application Form and Employment and Training Administration Form 27; USDI Medical History Forms; Personal and Statistical Information. (2) Optional; Evaluation of enrollees performance by camp staff; Accident, injury, and treatment forms. (3) Past enrollees; List of names and addresses. (4) Current alternates (YCC) USDI Application Form and Employment and Training Administration Form 27.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93–408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) the identification of current and past enrollees and current alternates or applicants; (b) for the selection of alternate upon enrollee withdrawal from program (YCC), (c) to provide enrollee participation record for school credit. Disclosures outside of the Department of the Interior may be made (1) to the U.S. Department of Agriculture in connection with joint administration of YCC program; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order, or license, to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation or for enforcement or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (6) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in personnel jackets.

SAFEGUARDS:

In accordance with National Archives and Records Administration regulations (36 CFR 1228.150, *et seq.).*

RETENTION AND DISPOSAL:

In accordance with Interior Department, Office of the Secretary Records Schedule NCa–48–82–1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Historically Black College and University Programs and Job Corps, Department of the Interior, Office of the Secretary, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written, signed request stating that the requester seeks information pertaining to him/her is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, medical doctor, school or other official.

INTERIOR/OS–26

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee Payroll Records File—Interior, Office of the Secretary—26.

SYSTEM LOCATION:

Pertinent Federal Records Center National Archives and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Youth accepted into the YCC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel, pay, statistical and termination data compiled by camp officials.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93–408.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) the identification of current and past enrollees and corpsmembers; (b) for payroll purposes for current enrollees and corpsmember; (c) to develop demographic characteristics of enrollee and corpsmember population for statistical purposes. Disclosures outside the Department of the Interior may be made (1) to the Department of the Treasury for preparation of (a) payroll checks and (b) payroll deduction and other checks to Federal, State, and local government agencies, nongovernmental organizations and individuals; (2) to the Internal Revenue and to State, Commonwealth, Territorial and local government for tax purposes; (3) to the Civil Service Commission in connection with the Civil Service Retirement System; (4) to another Federal agency to which an employee has transferred; (5) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (6) of information indicating a violation or potential violation of a statute, regulation, rule, order or license, to appropriate Federal, State, local or foreign agencies responsible for investigating or prosecuting the violation or for enforcing or implementing the status, rule regulation, order or license; (7) to a Congressional office from the record of an individual in response to an inquiry the individual has made to the Congressional office; (8) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit; (9) to Federal, State, or local agencies where necessary to obtain information relevant to the hiring or retention of an employee, or the issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Current and past personal and statistical information on magnetic tape and printouts.

RETRIEVABILITY:

Tape reels are coded by number.

SAFEGUARDS:

In accordance with National Archives and Records Administration regulations (36 CFR 1228.150, *et seq).*

RETENTION AND DISPOSAL:

In accordance with General Records Schedule No. 2, Item 1.

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Historically Black College and University Programs and Job Corps, U.S. Department of the Interior, Washington, DC 20240.

NOTIFICATION PROCEDURE:

Inquiries regarding the existence of records should be addressed to the System Manager. A written signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURES:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.71.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained camp personnel.

INTERIOR/OS–27.

SYSTEM NAME:

Youth Conservation Corps (YCC) Enrollee Medical Records—Interior, Office of the Secretary—27.

SYSTEM LOCATION:

Pertinent Federal Records Center, National Archieves and Records Administration.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Enrollees of past Interior Federal YCC program.

CATEGORIES OF RECORDS IN THE SYSTEM:

(1) U.S.C.I. Medical History Forms. (2) Accident, injury and treatment forms. (3) Parental permission portion of the U.S.D.I. Application forms for YCC enrollees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub. L. 93–408

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

The primary uses of the records are (a) for the adjudication of FERC medical claims, and (b) the adjudication of tort claims. Disclosures outside the

Department of the Interior may be made (1) to the U.S. Department of Agriculture in connection with joint administration of the YCC program; (2) to the U.S. Department of Justice or in a proceeding before a court or adjudicative body when (a) the United States, the Department of the Interior, a component of the Department, or, when represented by the government, an employee of the Department is a party to litigation or anticipated litigation or has an interest in such litigation, and (b) the Department of the Interior determines that the disclosure is relevant or necessary to the litigation and is compatible with the purpose for which the records were compiled; (3) of information indicating a violation or potential violation of a statute, regulation, rule, order or license to appropriate Federal, State, local, or foreign agencies responsible for investigating or prosecuting the violation of for enforcing or implementing the statute, rule, regulation, order or license; (4) to a congressional office from the record of an individual in response to an inquiry the individual has made to the congressional office; (5) to a Federal agency which has requested information relevant or necessary to its hiring or retention of an employee, or issuance of a security clearance, license, contract, grant or other benefit.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Manual records.

RETRIEVABILITY:

By individual name.

SAFEGUARDS:

In accordance with National Archieves and Records Administration regulations (36 CFR 1228.150, *et seq.).*

RETENTION AND DISPOSAL:

In accordance with Interior Department, Office of the Secretary Records Schedule NC1–46–82–1

SYSTEM MANAGER(S) AND ADDRESS:

Director, Office of Historically Black College and University Programs and Job Corps, Department of the Interior, Office of the Secretary, Washington, DC. 20240.

NOTIFICATION PROCEDURE:

Inquires regarding the existence of records should be addressed to the System Manager. A written signed request stating that the requester seeks information concerning records pertaining to him is required. See 43 CFR 2.60.

RECORD ACCESS PROCEDURE:

A request for access may be addressed to the System Manager. The request must be in writing and be signed by the requester. The request must meet the content requirements of 43 CFR 2.63.

CONTESTING RECORD PROCEDURES:

A petition for amendment should be addressed to the System Manager and must meet the content requirements of 43 CFR 2.71.

RECORD SOURCE CATEGORIES:

Individual on whom the record is maintained, medical doctor, and camp official compiling accident of medical treatment information.

[FR Doc. 88–24162 Filed 10–18–88; 8:45 am]
BILLING CODE 4310–RR–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of the Final Master Plan and Environmental Assessment for Laguna Atascosa National Wildlife Refuge, Rio Hondo, TX

AGENCY: U.S. Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the final Master Plan and Environmental Assessment for Laguna Atascosa National Wildlife Refuge (Refuge), Rio Hondo, Texas, is available for public review. Comments and suggestions are requested. The Master Plan reaffirms objectives which support the purpose for which the Refuge was established, i.e., providing habitat for migrating and wintering waterfowl. The plan also contains objectives for the preservation of endangered species, particularly ocelots and jaguarundi. Finally, secondary objectives relating to public use of the Refuge for interpretive and recreational purposes have been developed. In addition to the proposed objectives and management strategies presented in these documents, the Environmental Assessment contains brief descriptions of alternative objectives and management strategies which were considered during the planning process, including the public participation phases. The pros and cons of these alternatives and the reasons for their exclusion from the Master Plan are presented in each description.

DATES: Written comments are requested by December 19, 1988.

ADDRESS: Comments should be addressed to: Regional Director, U.S. Fish and Wildlife Service, P.O. Box 1306, Albuquerque, NM 87103.

FOR FURTHER INFORMATION CONTACT: Ray Rauch, Refuge Manager, Laguna Atascosa National Wildlife Refuge, P.O. Box 450, Rio Hondo, TX 78583

Individuals wishing copies of the final Environmental Assessment or Master Plan should immediately contact Mr. Rauch. Copies have been sent to all agencies and individuals who participated in the public paticipation process and to all others who have already requested copies.

SUPPLEMENTARY INFORMATION: Ray Rauch is the primary author of these documents. The U.S. Fish and Wildlife Service (Service), Department of the Interior, has prepared a Master Plan and an accompanying Environmental Assessment on the proposed management of the Laguna Atascosa Refuge, a 45,074-acre area located in Cameron and Willacy Counties in the Lower Rio Grande Valley near Brownsville, Texas. The plan calls for the slight redirection of the management program at Laguna Atascosa Refuge in three areas. The first involves the restoration of aquatic habitat necessary to support food sources for wintering redhead. The second deals with the development and maintenance of habitats important to the perpetuation of endangered species, paticularly cat species, which historically have occurred naturally in the Refuge area. The third provides for additional emphasis on the development of nesting/brooding habitat to enhance the product of mottled ducks.

The principal thrust of this Master Plan is the rehabilitation of the Laguna Atascosa (Parker Lake) so that it once again produces adequate submergent aquatic vegetation and other organisms to feed wintering redhead ducks upon their arrival from the breeding grounds. This rehabilitation will involve the reshaping of the lake bottom to permit complete drawdown, Once that is accomplished, the lake will be drawn down periodically (perhaps every 2 or 3 years) to allow the lake bottom to aerate and solidify. This aeration process stimulates aquatic growth once the lake is refilled, and retards turbidity caused by wave action.

Another major thrust of this Master Plan is in the management of brush habitat for endangered cat species. The ocelot is the principal endangered cat species known to be resident on the Refuge. Sightings of jaguarundi indicate that this species is present also. In

addition to protecting existing cat habitat, about 500 acres of cropland will be converted to brush to increase the available habitat for these species.

This Master Plan calls for a development effort in selected saline grasslands of the Refuge to expand nesting/brooding habitat for mottled ducks. The proper construction of additional open water areas in these grasslands should triple the mottled duck production on the Refuge.

Waterfowl objectives for the three species of geese and sandhill cranes, which winter at the Refuge, remain unchanged. However, with the conversion of almost half of the existing cropland to brush, it will not be possible to manage the remaining cropland under a cooperative farming arrangement. Thus, this Master Plan calls for the return to "force account" farming with its attendant increase in operating costs as the means of providing a food supply for these species.

The final thrust of this plan involves modifications to the visitor center and the entrance drive/parking area associated with this building. The entrance road to the visitor center will be relocated and parking areas rebuilt to permit a more orderly and safe traffic flow around this facility by the visiting public. A public restroom facility will be constructed adjacent to the visiting center. The present public restroom must be removed to permit rerouting of the entrance road. In addition, an auditorium will be added to the rear of the visitor center to provide a place for the presentation of interpretive programs to groups of visitors.

Coordination

Other government agencies and several members of the general public contributed to the planning and evaluation of the Master Plan and Environmental Assessment. Besides a wide variety of Service personnel, others participating in the planning process included representatives from the Texas Parks and Wildlife Department, the Texas General Land Office, the Caesar Kleburg Wildlife Research Institute, the Cooperative Fish and Wildlife Research Unit of Oklahoma State University, and the Peregrine Fund. Two public meetings were held to discus alternatives, with a total attendance of approximately 115. During the public involvement process seven informational mailings were provided to interested agencies and the general public.

The Service has determined that these documents do not contain a major proposal requiring preparation of an economic impact analysis under Executive Order E.O. 11821, as amended by E.O. 11949, and OMB Circular A–107.

Dated: October 6, 1988.

Michael Spear,

Regional Director.

[FR Doc. 88–24114 Filed 10–18–88; 8:45 am]

BILLING CODE 4310–AN–M

Bureau of Land Management

[ID–010–09–4341–02]

Meeting; Boise District Advisory Council

AGENCY: Boise District, Bureau of Land Management, Idaho, Interior.

ACTION: Notice of meeting.

SUMMARY: The Boise District Council will conduct a daylong field tour of the Snake River Birds of Prey Area and hold a business meeting to discuss riparian management issues.

DATES: The field tour will be held on Tuesday, November 1, 1988 and the business meeting will be held Wednesday, November 2, 1988. A public comment opportunity will be held at 1:00 p.m., November 2.

ADDRESSES: The Boise District Office is located at 3948 Development Avenue, Boise, Idaho, 83705.

FOR FURTHER INFORMATION CONTACT: Barry Rose, Boise District Bureau of Land Management, (208) 334–9303.

Dated: October 3, 1988.

J. David Brunner,

District Manager.

[FR Doc. 88–24079 Filed 10–18–88; 8:45 am]

BILLING CODE 4310–GG–M

[WY–060–89–4320–12]

Meeting; Casper District Grazing Advisory Board

AGENCY: Bureau of Land Management, Interior.

ACTION: District Grazing Advisory Board meeting.

SUMMARY: The Casper District Advisory Board will meet at 10:00 a.m. on Tuesday November 22, 1988. The meeting will convene at the Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, Wyoming. The agenda will include: (1) The election of a board chairman and vice-chairman; (2) new member orientation; (3) a follow-up report to the Board from the last meeting; and (4) a discussion of range improvement projects and allotment management plans.

DATE: November 22, 1988, 10:00 a.m.

ADDRESS: To request summary minutes or time on the agenda, contact: Bureau of Land Management, Casper District Office, 1701 East "E" Street, Casper, WY 82601.

FOR FURTHER INFORMATION CONTACT: Bruce Daughton at (307) 261–5575.

SUPPLEMENTARY INFORMATION: The meeting is held in accordance with section 3, Executive Order 12548 of February 14, 1986. The meeting is open to the public. Time will be available for public statements to the Board. Interested persons may testify or submit written statements for Board consideration. Anyone wishing to make an oral statement should notify the district manager by November 22, 1988. Depending on the number of persons wishing to make statements, a per person time limit may be imposed by the district manager.

Summary minutes of the Board meeting will be maintained in the district office and will be available for public inspection within 30 days following the meeting.

Katheryne Alexander,

Acting District Manager.

October 5, 1988.

[FR Doc. 88–24080 Filed 10–18–88; 8:45 am]

BILLING CODE 4310–22–M

(UT–920–89–4120–10)

Utah and Colorado; Uinta Southwestern Utah Regional Coal Team Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of regional coal team meeting.

SUMMARY: In accordance with the responsibility outlines in the Federal Coal Management Regulations (43 CFR Part 3400), the Regional Coastal Team for the presently decertified Uinta Southwestern Utah Federal Coal Production Region will hold a meeting to discuss and make recommendations on two coal lease applications that have been filed under "Leasing by Application" procedures now in effect in the region. The applications are in the Utah portion of the region and include an application filed by Coastal States Energy in February 1988, for a 9,905 acre tract in Sevier County, Utah near their SUFCO mine; and an application filed by Cyprus Western Coal Company, in July 1988, for a 1,826 acre tract in Carbon County, Utah near their Plateau Star Point No. 2 mine.

DATE: The Regional Coal Team will meet on November 17, 1988, at 1:00 p.m.

ADDRESS: The meeting will be held in the BLM, Utah State Office Conference Room, Salt Lake City Hall Building, 324 South State, 4th Floor, Salt Lake City, Utah.

FOR FURTHER INFORMATION CONTACT: Max Nielson, Uinta Southwestern Utah Project Manager, Utah State Office, 324 South State, Suite 301, Salt Lake City, Utah 84111–2303, telephone 801–5324–3004.

SUPPLEMENTARY INFORMATION: The Regional Coal Team will make recommendations to the BLM on processing coal lease application U–63214 by Coastal States Energy and U–64263 by Cyprus Western Coal Company. The RCT will make final recommendations on the Coastal application and review the Cyprus applications for the availability of existing data to meet Regional Data Adequacy Standards and the logical delineation of a lease tract to be considered.

Date: October 11, 1988.

James M. Parker,

State Director of Utah.

[FR Doc. 88–2410 Filed 10–18–88; 8:45 am]

BILLING CODE 4310–DQ–M

[(NV–930–09–4212–22; CC–021027, Nev–062283, N–12906, N–16385)]

Order Providing for Opening of Lands, Correction; Nevada

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: The purpose of this notice is to correct two errors in a **Federal Register** Notice published on November 2, 1984.

EFFECTIVE DATE: October 19, 1988.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, Bureau of Land Management, Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520. 702–784–5481.

SUPPLEMENTARY INFORMATION: In **Federal Register** Docket 84–28889 appearing on page 44154 in the issue of Friday, November 2, 1984, the following corrections are made:

The first paragraph in column 3 should read:

The minerals in the lands described in T. 30 N., R. 57 E., T. 34 N., R. 61 E., and section 15 of T. 35 N., R. 60 E., are in private ownership. The minerals in the lands described in T. 34 N., R. 63 E., and sections 1, 3, 11, 13, and 23 of T. 35 N., R. 60 E., were reconveyed to the United States.

The fourth paragraph in column 3 should read:

At 9:00 a.m. on December 3, 1984, the lands described in T. 34 N., R. 63 E., and sections 1, 3, 11, 13, and 23 of T. 35 N., R. 60 E., will be open to location and entry under the United States mining laws and to applications and offers under the mineral leasing laws.

Robert G. Steele,

Deputy State Director, Operations.

[FR Doc. 88–24077 Filed 10–18–88; 8:45 am]

BILLING CODE 4310–HC–M

[(NV–930–09–4212–22)]

Filing of Plats of Survey; Nevada

October 4, 1988.

AGENCY: Bureau of Land Management, Interior.

ACTION. Notice.

SUMMARY: The purpose of this notice is to inform the public and interested State and local government officials of the latest filing of Plats of Survey in Nevada.

EFFECTIVE DATES: Filings were effective at 10:00 a.m. on the dates shown below.

FOR FURTHER INFORMATIN CONTACT: Lacel Bland, Chief, Branch of Cadastral Survey, Bureau of Land Management (BLM), Nevada State Office, 850 Harvard Way, P.O. Box 12000, Reno, Nevada 89520, 702–784–5484.

SUPPLEMENTARY INFORMATION: The Plats of Survey of lands described below were officially filed at the Nevada State Office, Reno, Nevada on the date indicated.

	Date filed
Mount Diablo Meridian, Nevada	
T. 35 N., R. 50 E.—Supplemental Plat	10/3/88
T. 32 N., R. 54 E.—Dependent Resurvey	9/28/88
T. 33 N., R. 54 E.—Dependent Resurvey	9/28/88
T. 32 N., R. 55 E.—Dependent Resurvey	9/28/88
T. 33 N., R. 55 E.—Dependent Resurvey	9/28/88
T. 31 N., R. 59 E.—Supplemental Plat	10/3/88
T. 28 S., R. 63 E.—Supplemental Plat	10/3/88

The surveys on Ts. 32 and 33 N., Rs. 54 and 55E., were accepted on September 16, 1988; the supplemental plats were accepted on October 3, 1988. All the surveys and the supplemental plats were executed to meet certain administrative needs of the BLM.

All of the above-listed plats are now the basic record for describing the lands for all authorized purposes. The plats will be placed in the open files in the BLM Nevada State Office and will be available to the public as a matter of information. Copies of the plats and related field notes may be furnished to the public upon payment of the appropriate fee.

Edward F. Spang,

State Director, Nevada.

[FR Doc. 88–24076 Filed 10–18–88; 8:45 am]

BILLING CODE 4310–HC–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 332–262]

The Economic Effects of Significant U.S. Import Restraints

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation, scheduling of hearings, and request for comments.

EFFECTIVE DATE: October 1, 1988.

FOR FURTHER INFORMATION CONTACT: Walker Pollard (202) 252–1228, or Donald Rousslang (202) 252–1223, Research Division, Office of Economics, U.S. International Trade Commission, Washington, DC 20436.

Background

The Commission instituted investigation No. 332–262 following receipt of a letter dated September 9, 1988, from the Senate Committee on Finance requesting the Commission to conduct an investigation under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)) of the economic effects of existing significant U.S. import restraints.

As requested by the Committee, the study will include an assessment of the effect on U.S. consumers, on the output and profits of U.S. firms, on the income and employment of U.S. workers, and on the net economic welfare of the United States. The study will assess the direct effect on U.S. industries that are protected by the import restraints and the indirect effects on "downstream" industries that are customers of the protected industries.

The study will consider the effects of significant restraints on U.S. imports, such as voluntary restraints on steel and autos, and Multifiber Arrangement, whether they result from an Act of Congress, an action taken under the fair trade laws of the United States, such as 201 investigations, or an international agreement. The study will not include those import restraints resulting from final antidumping of countervailing duty investigations by the ITC and the Department of Commerce or sections 337 and 406 investigations by the ITC.

The Committee has requested that the results of the study be reported in three phases. The first phase will address the effects of restraints on imports of manufactured products. The second phase will address the effects of restraints on imports of agricultural products and natural resources, and the third phase will address the effects of restraints on services industries. The Committee has requested that the report for the first phase be submitted within one year after receipt of this request, the report for the second phase within two years, and the report for the third phase within three years.

Public Hearing

A public hearing in connection with the first phase of this investigation will be held in the Commission Hearing Room, 500 E Street, SW., Washington, DC 20436, beginning at 9:30 a.m. on April 5, 1989. All persons shall have the right to appear by counsel or in person, to present information, and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street, SW., Washington, DC 20436, no later than noon, March 31, 1989. The deadline for filing prehearing briefs (original and 14 copies) is March 31, 1989. Dates for public hearings in connection with the second and third phases will be announced later.

Written Submissions

Interested persons are invited to submit written statements concerning the matters to be addressed in the report. Commercial or financial information that a party desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of § 201.6 of the Commission's *Rules of Practice and Procedure* (19 CFR 201.6). All written submissions, except for confidential business information, will be made available for inspection by interested persons in the Office of the Secretary to the Commission. To be assured of consideration by the Commission, written statements relating to the Commission's report and post-hearing briefs should be submitted at the earliest practical date and should be received no later than April 19, 1989. All submissions should be addressed to the Secretary to the Commission at the Commission's office in Washington, DC.

Hearing-impaired persons are advised that information on this matter can be obtained by contracting the Commission's TDD terminal on (202) 252–1810.

By order of the Commission.

Issued: October 13, 1988.

Kenneth R. Mason,

Secretary.

[FR Doc. 88–24201 Filed 10–18–88; 8:45 am]

BILLING CODE 7020–02–M

[Investigation No. 731–TA–389 (Final)]

3.5 Inch Microdisks and Media Therefor From Japan

AGENCY: United States International Trade Commission.

ACTION: Institution of a final antidumping investigation and scheduling of a hearing to be held in connection with the investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–389 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Japan of 3.5 inch microdisks and media therefor, [1] provided for in item 724.45 of the Tariff Schedules of the United States (and classified in subheading 8523.20.00 of the Harmonized Tariff Schedule of the United States), that have been found by the Department of Commerce, in a preliminary determination, to be sold in the United States at less than fair value (LTFV). Unless the investigation is extended, Commerce will make its final LTFV determination on or before December 7, 1988, and the Commission will make its final injury determination by January 26, 1989 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207), and Part 201, Subparts A through E (19 CFR Part 201; as amended, 53 FR 33041 *et seq.* (August 28, 1988)).

EFFECTIVE DATE: September 29, 1988.

FOR FURTHER INFORMATION CONTACT: Diane J. Mazur (202–252–1184), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–252–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–252–1000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of 3.5 inch microdisks and media therefor from Japan are being sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigation was requested in a petition filed on February 26, 1988, by Verbatim Corp., Charlotte, NC. In response to that petition the Commission conducted a preliminary antidumping investigation and, on the basis of information developed during the course of that investigation, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 12999, April, 20, 1988).

Participation in the Investigation

Persons wishing to participate in this investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and § 207.3 of the rules (19 CFR 201.16(c) and 207.3), each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by the service list), and a certificate of service must accompany the document.

[1] 3.5 inch microdisks and media therefor are defined as unrecorded flexible magnetic disk recording media, with or without protective covering, for ultimate use in recording and storing data with a 3.5 inch floppy disk drive.

The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 201.7(a)), the Secretary will make available business proprietary information gathered in this final investigation to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by such parties containing business proprietary information without a certificate of service indicating that it has been served upon all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in this investigation containing business proprietary information will be placed in the nonpublic record on December 5, 1988, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m., on December 20, 1988 at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 6, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 9:30 a.m. on December 12, 1988, in room 117 of the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 15, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any confidential materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(b)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be incuded in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 27, 1988. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before December 27, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary to the Commission.

Any business information for which business proprietary treatment is desired must be submitted separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties must obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 201.7(a)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than December 30, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

Issued: October 11, 1988.

By order of the Commission.

Kenneth R. Mason,

Secretary.

[FR Doc. 88-24200 Filed 10-18-88; 8:45 am]

BILLING CODE 7020-02-M

[Investigations Nos. 731-TA-400 and 402-404 (Final)]

Thermostatically Controlled Appliance Plugs and Internal Probe Thermostats Therefor From Canada, Japan, Malaysia, and Taiwan

AGENCY: United States International Trade Commission.

ACTION: Institution of final antidumping investigations and scheduling of a hearing to be held in connection with the investigations.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigations Nos. 731-TA-400 and 402-404 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Canada, Japan, Malaysia, and Taiwan of thermostatically controlled appliance plugs and internal probe thermostats therefor,[1] provided for in item 711.78 of the Tariff Schedules of the United States (TSUS), that have been found by the Department of Commerce, in preliminary determinations, to be sold in the United States at less than fair value (LTFV). Commerce will make its final determinations on or before December 6, 1988, and the Commission will make its final injury determinations by January

[1] For purposes of these investigations, the term "thermostatically controlled appliance plug" refers to any device designed to connect an electrical outlet (typically, a common wall receptacle) with a small cooking appliance of 2,000 watts or less (typically, a griddle, deep fryer, frying pan, multicooker, and/or wok) and regulate the flow of electricity, and thus the temperature, therein; consisting of (1) a probe thermostat encased in a single housing set with a temperature control knob (typically a dial calibrated with various temperature settings), and (2) a cord set. The term "internal probe thermostat" refers to any device designed to regulate automatically the flow of electricity, and thus the temperature, in a small heating apparatus of 2,000 watts or less (typically, small cooking appliances); consisting of a stainless steel tube (which connects to the heating apparatus) and other components used for thermostatic control. The products are currently provided for in items 711.7820 and 711.7840 of the *Tariff Schedules of the United States Annotated* (TSUSA) and are classifiable in subheadings 9032.10.00, 9032.20.00, 9032.89.60, 9032.90.60, and 9033.00.00 of the *Harmonized Tariff Schedule of the United States* (HTS).

25, 1989 (see sections 735(a) and 735(b) of the Act (19 U.S.C. 1673d(a) and 1673d(b))).

Pursuant to a request from petitioner under section 705(a)(1) of the Act (19 U.S.C. 1671(a)(1)), Commerce extended the date for its final determination in its countervailing duty investigation on thermostatically controlled appliance plugs and internal probe thermostats therefor from Taiwan to coincide with the date of its final determinations in these antidumping investigations. Accordingly, the Commission's schedule for the conduct of the countervailing duty investigation, inv. No. 701-TA-292 (Final), will conform with the schedule for the conduct of these antidumping investigations as set forth in this notice.

For further information concerning the conduct of these investigations, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, Part 207, Subparts A and C (19 CFR Part 207 as amended, 53 FR 33039 (August 29, 1988)), and Part 201, Subparts A through E (19 CFR Part 201).

EFFECTIVE DATE: September 28, 1988.

FOR FURTHER INFORMATION CONTACT: Elizabeth Haines (202-252-1200), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-252-1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202-252-1000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted as a result of affirmative preliminary determinations by the Department of Commerce that imports of thermostatically controlled appliance plugs and internal probe thermostats are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Act (19 U.S.C. 1673). The investigations were requested in a petition filed on April 15, 1988, by Triplex Inter Control (USA) Inc., St. Albans, VT. In response to that petition the Commission conducted preliminary antidumping investigations and, on the basis of information developed during the course of those investigations, determined that there was a reasonable indication that an industry in the United States was materially injured by reason of imports of the subject merchandise (53 FR 21532, June 8, 1988).

Participation in the Investigations

Persons wishing to participate in these investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in § 201.11 of the Commission's rules (19 CFR 201.11), not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. Any entry of appearance filed after this date will be referred to the Chairman, who will determine whether to accept the late entry for good cause shown by the person desiring to file the entry.

Service List

Pursuant to § 201.11(d) of the Commission's rules (19 CFR 201.11(d)), the Secretary will prepare a service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance. In accordance with § 201.16(c) and § 207.3 of the rules (19 CFR 201.16(c) and 207.3 as amended, 53 FR 33039 (August 29, 1988)), each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by the service list), and a certificate of service must accompany the document. The Secretary will not accept a document for filing without a certificate of service.

Limited Disclosure of Business Proprietary Information Under a Protective Order

Pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33039 (August 29, 1988)), the Secretary will make available business proprietary information gathered in these final investigations to authorized applicants under a protective order, provided that the application be made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive business proprietary information under a protective order. The Secretary will not accept any submission by parties containing business proprietary information without a certificate of service indicating that it has been filed with all the parties that are authorized to receive such information under a protective order.

Staff Report

The prehearing staff report in these investigations will be placed in the nonpublic record on December 1, 1988, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules (19 CFR 207.21).

Hearing

The Commission will hold a hearing in connection with these investigations beginning at 9:30 a.m. on December 15, 1988, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission not later than the close of business (5:15 p.m.) on December 7, 1988. All persons desiring to appear at the hearing and make oral presentations should file prehearing briefs and attend a prehearing conference to be held at 10:30 a.m. on December 12, 1988, at the U.S. International Trade Commission Building. The deadline for filing prehearing briefs is December 12, 1988.

Testimony at the public hearing is governed by § 207.23 of the Commission's rules (19 CFR 207.23). This rule requires that testimony be limited to a nonbusiness proprietary summary and analysis of material contained in prehearing briefs and to information not available at the time the prehearing brief was submitted. Any written materials submitted at the hearing must be filed in accordance with the procedures described below and any business proprietary materials must be submitted at least three (3) working days prior to the hearing (see § 201.6(a)(2) of the Commission's rules (19 CFR 201.6(b)(2))).

Written Submissions

All legal arguments, economic analyses, and factual materials relevant to the public hearing should be included in prehearing briefs in accordance with § 207.22 of the Commission's rules (19 CFR 207.22). Posthearing briefs must conform with the provisions of § 207.24 (19 CFR 207.24) and must be submitted not later than the close of business on December 21, 1988. In addition, any person who has not entered an appearance as a party to the investigations may submit a written statement of information pertinent to the subject of the investigations on or before December 21, 1988.

A signed original and fourteen (14) copies of each submission must be filed with the Secretary to the Commission in accordance with § 201.8 of the Commission's rules (19 CFR 201.8). All written submissions except for business proprietary data will be available for public inspection during regular business hours (8:45 a.m. to 5:15 p.m.) in

the Office of the Secretary to the Commission.

Any information for which business proprietary treatment is desired must be submited separately. The envelope and all pages of such submissions must be clearly labeled "Business Proprietary Information." Business proprietary submissions and requests for business proprietary treatment must conform with the requirements of § 201.6 and § 207.7 of the Commission's rules (19 CFR 201.6 and 207.7).

Parties which obtain disclosure of business proprietary information pursuant to § 207.7(a) of the Commission's rules (19 CFR 207.7(a) as amended, 53 FR 33039 (August 29, 1988)) may comment on such information in their prehearing and posthearing briefs, and may also file additional written comments on such information no later than December 27, 1988. Such additional comments must be limited to comments on business proprietary information received in or after the posthearing briefs.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules (19 CFR 207.20).

By order of the Commission.

Kenneth R. Mason,

Secretary.

Issued: October 14, 1988.

[FR Doc. 88-24199 Filed 10-18-88; 8:45 am]

BILLING CODE 7020-01-M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB-290 (Sub-No. 42X)]

Southern Railway Co. and Tennessee Railway Co.; Discontinuance of Service and Abandonment Exemption Between Devonia and Fork Mountain, TN

Applicants have filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to discontinue service over and abandon their 2.7-mile line of railroad between milepost TE-42.0, at Devonia, TN, and milepost TE-44.7, at Fork Mountain, TN. Tennessee Railway Company is a subsidiary of Southern Railway Company.

Applicants have certified that: (1) No local or overhead traffic has moved over the line for at least 2 years; and (2) no formal complaint filed by a user of rail service on the line (or by a State or local governmental entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or any U.S. District Court, or has been decided in favor of the complainant within the 2-year period. The appropriate State agency has been notified in writing at least 10 days prior to the filing of this notice.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected pursuant to *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective November 18, 1988 (unless stayed pending reconsideration). Petitions to stay regarding matters that do not involve environmental issues [1] and formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2) [2] must be filed by October 31, 1988, and petitions for reconsideration, including environmental, energy, and public use concerns, must be filed by November 8, 1988 with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: Roger A. Petersen, Norfolk Southern Corporation, One Commercial Place, Norfolk, VA 23510-2191.

If the notice of exemption contains false or misleading information, use of the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses environmental or energy impacts, if any, from this transaction.

The Section of Energy and Environment (SEE) wil prepare an environmental assessment (EA). SEE will issue the EA by October 24, 1988. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3115, Interstate Commerce Commission, Washington, DC 20423) or by calling Carl Bausch, Chief, SEE at (202) 275-7316. A notice to the parties will be issued if use of the exemption is conditoned upon environmental or public use conditions.

Decided: October 12, 1988.

By the Commission, Jane F. Mackall, Director, Office of Proceedings.

Noreta R. Gee,

Secretary.

[FR Doc. 88-24036 Filed 10-18-88; 8:45 am]

BILLING CODE 7035-01-M

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 4 I.C.C.2d 400 (1988).

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987), and final rules published in the **Federal Register** on December 22, 1987 (52 FR 48440-48446).

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; City of Hurricane, WV, et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 12, 1988, a proposed Consent Decree in *United States v. City of Hurricane, et al.* was lodged with the United States District Court for the Southern District of West Virginia. The proposed decree requires that the city construct modifications to the plant to enable it to function in compliance with permits issued by EPA and the State of West Virginia according to an enforceable schedule. The decree also requires that interim effluent limits be met during the period of construction, and that the plant attain full compliance with the provisions of the Clean Water Act no later than October 31, 1990. The decree requires a payment of a $29,000 civil penalty as a consequence of past violations of the Act.

The Department of Justice will receive for a period of thirty (30) days from the date of publication of this notice comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant General, Land and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States v. City of Hurricane*, Ref. 90-5-1-1-2869.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Federal Building, 500 Quarrier Street, Charleston, West Virginia, at the Region III Office of the Environmental Protection Agency, 841 Chestnut Street, Philadelphia, Pennsylvania 19107, and at the Environmental Enforcement Section, Land and Natural Resources Division, Department of Justice, Room 1515, Ninth Street and Pennsylvania Avenue, NW., Washington, DC 20530. A copy of the proposed Consent Decree may be obtained in person or by mail from the Environmental Enforcement Section, Land and Natural Resources Division of the Department of Justice. In requesting a copy, please enclose a check in the amount of $2.50 for reproduction costs,

payable to the "Treasurer of the United States."

Roger J. Marzulla,

Assistant Attorney General, Land and Natural Resources Division.

[FR Doc. 88-24019 Filed 10-18-88; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[88-89]

NASA Advisory Council (NAC), Space Science and Applications Advisory Committee (SSAAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Space Science and Applications Advisory Committee.

DATE AND TIME: November 2, 1988, 8:30 a.m. to 5:15 p.m., November 3, 1988, 8:30 a.m. to 5 p.m., and November 4, 1988, 8:30 a.m. to 12:30 p.m.

ADDRESS: NASA Headquarters, Room 226A, 600 Independence Avenue SW., Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph K. Alexander, Code E, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-1430).

SUPPLEMENTARY INFORMATION: The Space Science and Applications Advisory Committee consults with and advises the NASA Office of Space Science and Applications (OSSA) on long range plans for, work in progress on, and accomplishments of NASA's Space Science and Applications programs. The Committee will meet to formulate plans for the Committee's future and receive reports on OSSA planning, Life Sciences, Space Station Science and Applications, and NASA Division Advisory Committees. The Committee is chaired by Dr. Berrien Moore and is composed of 24 members. The meeting will be open to the public up to the capacity of the room (approximately 45 including Committee members).

Type of Meeting: Open.

Agenda

Wednesday, November 2

8:30 a.m.—Introductions and Chairman's Remarks.
9 a.m.—Goals, Purposes and Structure of Committee.
9:30 a.m.—Office of Space Science and Applications (OSSA) Strategic Plan.
10:45 a.m.—OSSA 4-year Calendar.
1:15 p.m.—Status of Mixed Fleet.
3:15 p.m.—Small-class Explorer.
4:30 p.m.—Committee Discussion.
5:15 p.m.—Adjourn.

Thursday, November 3

8:30 a.m.—Chairman's Remarks.
8:45 a.m.—Reports from Chairs of Division Advisory Committees.
10:15 a.m.—Seminar on Life Sciences.
11:15 a.m.—Committee Discussion.
1:15 p.m.—Life Sciences: Program Management and Plans.
3:30 p.m.—Space Station Science and Applications Subcommittee Report.
4 p.m.—Committee Discussion.
5 p.m.—Adjourn.

Friday, November 4

8:30 a.m.—Chairman's Remarks.
8:45 a.m.—Writing Group Meetings.
10:45 a.m.—Committee Discussion.
12:30 p.m.—Adjourn.

Philip D. Waller,

Director, General Management Division.

October 13, 1988.

[FR Doc. 88-24070 Filed 10-18-88; 8:45 am]

BILLING CODE 7510-01-M

[Notice (88-90)]

NASA Advisory Council (NAC), History Advisory Committee (HAC); Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Pub. L. 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, History Advisory Committee.

DATE AND TIME: November 4, 1988, 8:30 a.m. to 2 p.m.

ADDRESS: National Aeronautics and Space Administration, John F. Kennedy Space Center, John F. Kennedy Space Center Headquarters Building, Room 1403, Kennedy Space Center, FL 32899.

FOR FURTHER INFORMATION CONTACT: Dr. Sylvia D. Fries, Code XH, National Aeronautics and Space Administration, Washington, DC 20546 (202/453-8300).

SUPPLEMENTARY INFORMATION: The History Advisory Committee was established to provide advice and guidance to the NASA history program, which maintains a non-record historical reference file and publishes works in the history of aeronautics and space science and technology. The Committee, chaired by Dr. Arthur Norberg, consists of 7 members. The meeting will be open to the public up to the seating capacity of the room, which is approximately 20 persons, including Committee members and other participants. Visitors will be requested to sign a visitor's register.

Type of Meeting

Open.

Agenda

November 4, 1988

8:30 a.m.—Introductory Remarks.
8:45 a.m.—Report of the Director, NASA History Division.
1 p.m.—Prospects and Issues: History Program Future Directions.
2 p.m.—Adjourn.

October 13, 1988.

Philip D. Waller,

Director, General Management Division.

[FR Doc. 88-24084 Filed 10-18-88; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Nixon Presidential Historical Materials; Opening of Materials

AGENCY: National Archives and Records Administration.

ACTION: Notice of opening of materials.

SUMMARY: This notice announces the opening of selected subject categories and staff member files from the Nixon White House Central Files (WHCF) and selected audiovisual materials. Notice is hereby given that, in accordance with section 104 of title I of the Presidential Recordings and Materials Preservation Act (88 Stat. 1695; 44 U.S.C. 2111 note) and § 1275.42(b) of the Public Access Regulations implementing the Act (36 CFR Part 1275), the agency has identified inventoried, and prepared for public access integral file segments of materials among the Nixon Presidential materials.

DATE: The National Archives intends to make the integral file segments described in this notice available to the public beginning December 9, 1988. Any person who believes it necessary to file a claim or privilege concerning access to these materials should notify the Archivist of the United States in writing of the claimed right, privilege, or defense before December 5, 1988.

ADDRESS: The materials will be made available to the public at the National

Archieves' facility located at 845 South Pickett Street, Alexandria, Virginia.

Petitions concerning access must be sent to the Archivist of the United States, National Archives and Records administration, Washington, DC 20408.

FOR FURTHER INFORMATION CONTACT: James J. Hastings, Director, Nixon Presidential Materials Staff, 703–756–6498.

SUPPLEMENTARY INFORMATION: The integral file segments of textual materials to be opened consist of 221.2 cubic feet. This is the third of a series of openings of Central Files; the previous openings were on December 1, 1986, and March 22, 1988.

The White House Central Files Unit is a permanent organization within the White House complex that maintains a central filing and retrieval system for the records of the President and his staff. Some of the materials designated for opening on December 9 were selected from the Subject Files of the Central Files. The Subject Files are based on an alphanumeric file scheme of 61 primary subject categories. Listed below are the eight primary subject categories of the Subject Files that will be made available to the public on December 9.

Subject Category	Volume (cubic feet)
Federal Government (FG):	
Federal Government—Organizations (PG)	2.0
President of the United States (FG 1)	13.3
Former Presidents (FG 2)	1.6
Transition of Incoming Administration (FG 3)	.3
The Executive Branch (FG 5)	.3
Executive Office of the President (FG 6)	.3
Bureau of Budget (FG 6–1)	.6
Central Intelligence Agency (FG 6–2)	.3
Council of Economic Advisors (FG 6–3)	.6
National Council on Marine Resources (FG 6–5)	.3
National Security Council (FG 6–6)	2.0
Domestic Council (FG 6–15)	2.0
Office of Management and Budget (FG 6–16)	2.3
Cabinet (FG 10)	1.0
Department of Justice (FG 17)	3.3
Department of Agriculture (FG 20)	1.3
Department of Commerce (FG 21)	3.0
Federal Reserve System (FG 131)	.6
Insurance (IS)	1.3
Postal Service (PO)	1.3
Procurement (PQ)	2.0
Real Property (RA)	3.3
States-Territories (ST)	7.0
Trips (TR)	33.0

In addition to the subject categories, six file groups from the Staff Member and Office Files will be made available to the public. These consist of materials that were transferred to Central Files but were incorporated into the Subject Files. Listed below are the Staff Member and Office Files that will be made available to the public on December 9.

File Group	Volume (cubic feet)
Martin Anderson	17.0
Roy Ash	3.0
Council of Economic Advisors:	
Office Files	5.0
Hendrik Houthakker	22.3
Sidney Jones	.3
Ezra Solomon	9.0
Marina Whitman	7.3
Energy Policy Office	33.3
Bradley Patterson	27.3
Susan Porter	17.0

The Natioal Archives also will open on December 9 three segments of audiovisual materials. The segments to be opened were made or received by the White House during the Nixon administration and are dated from 1948 to 1974. The materials comprising these segments were not created by the White House Communications Agency or the Navy Photographic Center. The Nixon-related audiovisual materials of these two agencies were made available to the public previously.

The segments to be opened include sound recordings, videotapes, and motion picture film pertaining to a variety of topics and events such as the Nixon compaigns of 1960, 1968, and 1972, the Nixon Presidential inaugrations, press conferences, radio and television broadcast featuring Richard Nixon, and political campaign advertising. The three audiovisual segments to be opened are listed below.

Segment:	Number
Motion Film File (titles)	413
Video Recording File (title)	168
Sound Recording File (title)	249

Public access to some of the items in the textual and audiovisual segments will be restricted as outlined in 36 CFR 1275.50 or 1275.52 (Public Access Regulations). Reproduction of many of the audiovisual materials is limited by the provisions of the Copyright Act of 1976 (17 U.S.C. 101 *et seq.*)

Dated: October 14, 1988.

Don W. Wilson,

Archivist of the United States.

[FR Doc. 88–24175 Filed 10–18–88; 8:45 am]

BILLING CODE 7515–01–M

National Endowment for the Arts; Meeting; National Council on the Arts

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the National Council on the Arts will be held on November 4–5, 1988, from 9:00 a.m. to 5:30 p.m., in Room M–09 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public on Friday, November 4, 1988, from 9:00 a.m. to 5:30 p.m., and Saturday, November 5, 1988, from 9:00 a.m. to 12:00 noon. The topics for discussion will include Program Review and Guidelines for Design Arts, Media Arts, Visual Arts, Guidelines only for Local Programs: Special Constituencies Model Projects, Music: Presenters/Festivals, Inter-Arts: Presenters/Services/Artists Colonies and Dance on Tour (formerly Dance/Inter-Arts/State Programs—DIS) and reports on the Reauthorization and arts activities in the Pacific Rim.

The remaining session on Saturday, November 5, 1988, from 1:30 p.m. to 5:30 p.m. are for the purpose of Council review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman published in the **Federal Register** of February 13, 1980, these sessions will be closed to the public pursuant to subsections (c)(4), (6) and 9(B) of Title 5, United States Code.

If you need special accommodations due to a disability, please contact the Office for Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–55232, TTY 202/682–5496 at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National

Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

October 14, 1988.

[FR Doc. 88–24197 Filed 10–18–88; 8:45 am]

BILLING CODE 7537–01–M

National Endowment on The Arts; National Council on the Arts; National Council on the Arts/National Assemblies of State Arts Agencies and Local Arts Agencies Subcommittee

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Naitonal Council on the Arts/National Assembly of State Arts Agencies/National Assembly of Local Arts Agencies Sub-Committee to the National Council on the Arts will be held on November 3, 1988, from 2:00 p.m.–5:00 p.m. in room M07 of the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. The topics for discussion will include Support for Facilities, Support for Organizations and Cultural Diversity.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 88–24198 Filed 10–18–88; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL COMMUNICATIONS SYSTEM

High Frequency Radio Subcommittee; Dissemination of Meeting Information

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Dissemination of meeting information.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, U.S. Department of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303, (303) 497–3723.

High Frequency (HF) Radio Subcommittee, Automatic Link Establishment (ALE) Standards Development Working Group (SDWG) open meeting; dissemination of meeting information.

A meeting of the SDWG was held May 13, 1988 at the GSA Building, 18th and F Street, NW., Washington, DC to gather additional information necessary to formulate proposed Federal Standard 1045 (pFS 1045).

Agenda

1. Opening remarks by the Chairman.
2. Presentation by Mr. Bill Beamish, Harris Corp., Rochester, NY.
3. Presentation by Mr. Jim Harmon, Rockwell International, Cedar Rapids, IA.
4. Adjourn.

This meeting was held for the benefit of the working group members to better understand the technical aspects of the two technical approaches being considered for adoption as the basis for pFS 1045. The two companies most knowledgeable about the two approaches were invited to present a technical review to the SDWG.

Representatives of companies interested in the HF Radio ALE standard may be interested in the information presented at this meeting.

For further information or copies of the minutes of this meeting, please call or write: David F. Peach, U.S. Department of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80303, (303) 495–5309.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

Janet Orndorff,

Editorial Assistant.

Jeanette LaBonte,

Secretary.

George W. White,

Consultant.

[FR Doc. 88–24111 Filed 10–18–88; 8:45 am]

BILLING CODE 3610–05–M

High Frequency Radio Automatic Link Establishment Subcommittee; Meeting

AGENCY: Office of Technology and Standards, National Communications System.

ACTION: Notice of open meeting.

FOR FURTHER INFORMATION CONTACT: Mr. Robert T. Adair, U.S. Dept of Commerce, NTIA/ITS Mail Drop ITS.N1, 325 Broadway, Boulder, CO 80313 (303) 497–5309.

High Frequency (HF) Radio Automatic Link Establishment (ALE) Subcommittee, Federal Telecommunication Standards Committee (FTSC); Open Meeting.

A meeting of the HF Radio ALE Subcommittee will be held November 16–18, 1988 from 9:30 am to 3:30 pm at the Mitre Corp., Hayes Building, 7525 Colshire Drive McLean, VA. The HF Radio Subcommittee was formed to develop proposed Federal Standard 1045 (pFS 1045) and a family of standards that will define the technical requirements of HF adaptive radio systems. This meeting will provide a briefing on pFS 1045 and other proposed standards in the family.

Agenda

1. Opening remarks by the Chairman
2. Overview of the standards development process
3. Overview of pFS 1045
4. Overview of the family of standards
5. Assessment of economic and technical impact due to pFS 1045
6. Panel discussion with opportunity for questions and discussion
7. Adjourn

The meeting will commence on November 16 at 9:30 am and will continue until all agenda items have been covered. It is anticipated that the meeting will adjourn before 3:30 pm on November 18.

This meeting will be held for the benefit of those who are interested in pFS 1045 or other standards in the family of HF radio standards. A draft of pFS 1045 will be available for review at the meeting. The meeting is a vital step in the standards preparation process and is necessary before presentation of pFS 1045 to the FTSC later in 1988.

Those wishing to attend must call the Chairman, Mr. Robert T. Adair, by November 11, 1988, for authorization to attend. Attendance will be limited to two (2) representation per organization. Those who wish to send their security clearances, may send them to: Mitre Corp., 7525 Colshire Drive, McLean, VA 22102, Attention: Frank Arndt, Security, (703) 883–6551.

For further information or minutes of the meeting call or write: Robert T. Adair, U.S. Dept. of Commerce, NTIA/

ITS Mail Drop ITS.N1, 325 Broadway Boulder, CO 80303 (303) 497-3723.

Dennis Bodson,

Assistant Manager, NCS Office of Technology and Standards.

Janet Orndorff,

Editoral Asst.

Jeanette LaBonte,

Secretary.

George W. White,

Consultant.

[FR Doc. 88-24112 Filed 10-18-88; 8:45 am]

BILLING CODE 3610-05-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-259/260/296]

Tennessee Valley Authority; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC/the Commission) is considering issuance of an exemption from the requirements of Appendix R of 10 CFR Part 50 to the Tennessee Valley Authority (TVA/the licensee), for the Browns Ferry Nuclear Power Plant, Unit 2, located at the licensee's site near Decatur, Alabama.

Environmental Assessment

Identification of Proposed Action

The licensee would be exempted from the technical requirements of Section III.L.1.b of Appendix R to 10 CFR Part 50 to the extent that the reactor coolant level would be permitted to drop below the top of the core during use of alternate safe shutdown procedures following a postulated fire which renders the control room uninhabitable.

The licensee would also be exempted from the technical requirements of Section III.G.1 of Appendix R which relate to fire protection features for ensuring that systems and associated circuits used to achieve and maintain safe shutdown and free of fire damage. The exemptions are technical since the licensee must demonstrate that fire protection configurations meet the specific requirements of Section III.G or that alternate fire protection configuration can be justified by an acceptable fire hazard analysis. The licensee would be specifically exempted from the requirements of Section III.G. in the following areas:

- Exemption from fixed suppression in the main control rooms;
- Exemption from an automatic fire suppression system in the residual heat removal (RHR) system pump rooms and RHR heat exchanger rooms;
- Exemption from intervening combustibles; and
- Exemption for fixed suppression and detection.

The Need for the Prepared Action

In evaluating the limiting case fire event, the licensee assumed that the RHR system, in the low pressure coolant injection system (LPCI) mode of operation, is to be used to maintain the Reactor Coolant (RC) inventory after achieving manual depressurization of the Reactor Coolant System (RCS) utilizing the main steam relief valves (MSRVs). The above method has the potential for uncovering the upper portion of the core for a short time during the depressurization contrary to the requirements of Section III.L.1.b. The staff has evaluated the alternate shutdown method and concluded that it is acceptable because the licensee's calculated time of potential core uncovery is short enough to preclude a threat to the fuel cladding integrity.

The proposed exemptions to Section III.G are needed because features described in the licensee's request regarding the existing and proposed fire protection at Browns Ferry for these items are the most practical method for meeting the intent of Appendix R, and literal compliance would not significantly enhance the fire protection capability at Browns Ferry.

Environmental Impact of the Proposed Action

The proposed exemption to Section III.L would not impact the ability to effect safe shutdown of the plant in the event of a fire in the control room, would not pose a threat to the fuel cladding integrity, and would provide an acceptable level of safety, equivalent to that attained by compliance with Section III.L of Appendix R to 10 CFR Part 50. Therefore, the proposed changes do not increase the probability or consequences of accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Accordingly, the Commission concludes that there are no significant radiological impacts associated with this proposed exemption.

The proposed exemption to Section III.G will provide a degree of fire protection such that there is no increase in the risk of fires at Browns Ferry. Consequently, the probability of fires has not been increased and the post-fire radiological releases will not be greater than previously determined nor do the proposed exemptions otherwise affect plant radiological effluents.

With regard to potential nonradiological impacts, the proposed exemption involves features located entirely within the restricted areas as defined in 10 CFR Part 20. It does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed exemption.

Alternative Use of Resources

This action involves no use of resources not previously considered in the Final Environmental Statement (construction permit and operating license) for the Browns Ferry Nuclear Plant.

Since the Commission has concluded that there is no measurable environmental impact associated with the proposed exemptions, alternatives to the proposed action need not be evaluated. The principal alternative, however, to the exemptions would be to deny the exemptions requested by the licensee from the requirements of Appendix R. Such action would not enhance the protection of the environment.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated June 14, 1986, which is available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC, and at the NRC's Local Public Document Room located at the Athens Public Library, South Street, Athens, Alabama 35611.

Dated at Rockville, Maryland this 11th day of October, 1988.

For the Nuclear Regulatory Commission.

Suzanne C. Black,

Assistant Director for Projects, TVA Projects Division, Office of Special Projects.

[FR Doc. 88-24165 Filed 10-18-88; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-416]

System Energy Resources, Inc., et al., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-29 issued to Mississippi Power and Light Company, South Mississippi Electric Power Association and System Energy Resources, Inc. (the licensees) for operation of the Grand Gulf Nuclear Station, Unit 1, located in Claiborne County, Mississippi.

The proposed amendment would change the Technical Specifications (TS) in accordance with the guidance provided in Generic Letter 87-09, "Sections 3.0 and 4.0 of the Standard Technical Specifications (STS) on the Applicability of Limiting Conditions for Operation and Surveillance Requirements." The general requirements in TS 3.0.4, applicable to each Limiting Condition for Operation (LCO) within Section 3.0, would be changed to allow operational condition changes without meeting the LCO requirements provided the remedial actions in the associated action statements do not require reactor shutdown if the LCO is not met in a specified time. For those TS which presently have an exception to TS 3.0.4, the exception would be deleted because the change in TS 3.0.4 would achieve the same effect by itself. For applicable TS which do not presently have an exception to TS 3.0.4, the change in TS 3.0.4 provides increased operational flexibility. TS 4.0.3 would be changed to allow up to 24 hours additional time to run missed surveillance tests. TS 4.0.4 would be changed to clarify that it does not prevent changing operational conditions to comply with action requirements. The Bases for TS 3.0 and 4.0 would be changed to reflect the changes in the TS.

Prior to issuance of the license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

By November 18, 1988, the licensees may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for hearing and a petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition to leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene, which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene shall be filed with the Secretary of the Commission, United States Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, 2120 L Street NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner or representative for the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-800-325-6000 (in Missouri 1-800-342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to Elinor G. Adensam: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nicholas S. Reynolds, Esquire, Bishop, Liberman, Cook, Purcell and Reynolds, 1200 17th Street, NW., Washington, DC 20036, attorney for the licensees.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

If a request for hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated August 19, 1988, which is available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC 20555, and at the Hinds Junior College, McLendon Library, Raymond, Mississippi 39154.

Dated at Rockville, Maryland, this 12th day of October, 1988.

For The Nuclear Regulatory Commission.
Lester L. Kintner,
Senior Project Manager, Project Directorate II-1, Divison of Reactor Projects I/II.
[FR Doc. 88-24166 Filed 10-18-88; 8:45 am]
BILLING CODE 7590-01-M

Biweekly Notice Applications and Amendments to Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law (P.L.) 97-415, the Nuclear Regulatory Commission (the Commission) is publishing this regular biweekly notice. P.L. 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from September 26, 1988 through October 6, 1988. The last biweekly notice was published on October 5, 1988 (53 FR 39165).

NOTICE OF CONSIDERATION OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration and Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-216, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 18, 1988 the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter, and the bases for each contention set forth with reasonable specificity. Contentions shall be limited to matters within the scope of the amendment under consideration. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no

significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 325-6000 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number 3737 and the following message addressed to (*Project Director*): petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board, that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of amendment requests: June 16, 1988 and April 14, 1986, as supplemented on April 28, 1987.

Description of amendment requests: The following proposed changes to the Technical Specifications (TS) are in partial response to the Baltimore Gas and Electric Company (BG&E, the licensee) submittals dated June 16, 1988 and April 14, 1986, as supplemented on April 28, 1987. The remaining issues will be addressed in separate correspondence. The proposed Units 1 and 2 TS changes would (1) modify TS 3/4.8.2.3, "Electrical Power Systems: D.C. Distribution - Operating," deleting the 18-month station battery service test dummy load profile from TS Surveillance Requirement (SR) 4.8.2.3.2.d.2 and maintaining the load profile in the Calvert Cliffs Nuclear Power Plant Units 1 and 2 Updated Final Safety Analysis Report (UFSAR) where it shall be controlled through the processes described in 10 CFR 50.59, "Changes, Tests and Experiments"; (2) adding the definition, "Refueling Interval - At least once per 24 months," to TS Definition 1.22, "Frequency Notation," Table 1.2; and (3) modify TS 3/4.3.6, "Instrumentation - Post-Accident Instrumentation," Table 3.3-10, "Post-Accident Monitoring Instrumentation Surveillance Requirements," by adding operability and surveillance testing requirements for the core exit thermocouple system.

Basis for proposed no significant hazards consideration determination: Change No. 1, as proposed in the BG&E letter of April 14, 1986, as supplemented on April 28, 1987, would delete the dummy load profile from the 18-month battery service test of TS SR 4.8.2.3.2.d.2. The correct battery load profile would be maintained in the UFSAR and controlled through the processes described in 10 CFR 50.59. The licensee is requesting this change to facilitate the shifting or modification of emergency loads on the four separate station batteries as necessitated by plant modifications and hardware additions.

In the June 16, 1988 submittal, BG&E proposed Change No. 2, which adds the definition "Refueling Interval-At least once per 24 months" to TS Definition 1.22, "Frequency Notation," Table 1.2, and Change No. 3 which modifies TS Tables 3.3-10 and 4.3-10 by adding operability and surveillance testing requirements for the core exit thermocouple system.

The licensee requested Change No. 2 to add the refueling interval definition to the TS in order to support the licensee's 24-month operating cycle. Recently, the Commission has approved several TS amendments in which the associated surveillance interval was changed from "R", at least once per 18 months, to the new frequency of "Refueling Interval" which was defined as at least once per 24 months. The "Refueling Interval" frequency notation is not used anywhere else in the Units 1 and 2 TS other than the amendments recently made in support of the 24-month operating cycle.

Change No. 3 requests the addition to the TS of operability and surveillance requirements for the core exit thermocouple system which was installed in response to NUREG-0737, "Clarification of TMI Action Plan Requirements," Item II.F.2, "Instrumentation for Detection of Inadequate Core Cooling."

The licensee evaluated these proposed changes against the standards of 10 CFR 50.92 and has determined that the amendments would not:

(i) Involve a significant increase in probability or consequences of an accident previously evaluated...

Change No. 1 is administrative in nature. No plant operations or equipment are affected as the station batteries will continue to be required by TS SR 4.8.2.3.2.d to successfully complete an 18-month battery service test under design basis emergency loading conditions. Furthermore, any future load profile changes will be required to be fully defined with an adequately reviewed and approved safety evaluation performed in accordance with the provisions of 10 CFR 50.59 prior to the implementation of any load changes.

Change No. 2 is administrative in nature, too. The addition of the frequency notation, "Refueling Interval," will affect only those TS requirements that were modified to support implementation of the licensee's 24-month operating cycle. Of the TS requirements affected, all were previously analyzed and approved for a 24-month surveillance interval. The addition of this definition is proposed for the sole purpose of placing these previously approved TS requirements surveillance interval changes in effect.

Change No. 3 proposes the addition of TS operability and surveillance requirements for the newly added core exit thermocouple system. These operability and surveillance requirements represent additional restrictions over the TS requirements currently in effect. Furthermore, the addition of these operability and surveillance requirements will not affect any other plant operations, equipment or accident analyses.

Consequently, these proposed changes would not result in any increase in the probability or consequences of previously evaluated accidents.

(ii) Create the possibility of a new or different type of accident from any accident previously evaluated...

These proposed changes do not alter any plant operability requirements, surveillance testing, maintenance, or system design or functions other than (1) the Change No. 2 implementation of the previously approved 24-month surveillance interval for specifically evaluated TS requirements and (2) the Change No. 3 addition of new, restrictive surveillance and operability requirements for the recently installed core exit thermocouple system.

The 24-month surveillance interval, as provided by the "Refueling Interval" frequency notation, was previously evaluated and approved for all TS requirements where this frequency notation is now in use. For each of these individual TS requirements, the NRC staff has previously determined that these changes in surveillance interval would not create the possibility of a new or different type of accident from any accident previously evaluated.

With regards to the addition of TS surveillance and operability requirements for the core exit thermocouple system, which is presently installed, these new TS requirements do not affect any other plant operations or equipment.

Thus, these changes, as proposed, would not create the possibility of any new or different type of accident.

(iii) Involve a significant reduction in a margin of safety...

These proposals do not alter any plant operational requirements or restrictions other than the Change No. 3 addition of new, restrictive core exit thermocouple system operability requirements. Therefore, these proposed changes will not involve any reduction in any margin of safety.

Finally, on March 6, 1986, the NRC published guidance in the **Federal Register** (51 FR 7751) concerning examples of amendments that are not likely to involve a significant hazards consideration.

These changes are consistent with two of the examples provided: "(i) A purely administrative change to the Technical Specifications..." and "(ii) A change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications." Consequently, the NRC staff proposes to determine that these proposed changes to TS 4.8.2.3.2.d.2; TS 1.22, Table 1.2; and TS 3/4.3.6, Tables 3.3-10 and 4.3-10 involve no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Attorney for licensee: Jay E. Silbert, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra, Director

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of amendment request: September 13, 1988

Description of amendment request: The proposed changes revises Table 3.22-2, "Fire Detection Instruments", by reducing the number of smoke detectors available in the containment from 23 to 22 and incorporates a new section of sprinkler protection in the turbine building into Technical Specification Section 3.22(G), "Spray and/or Sprinkler Systems".

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated 10 CFR 50.92(c). The staff has evaluated the proposed amendment and determined that it involves no significant hazards consideration. In accordance with the criteria set forth in 10 CFR 50.92(c), the proposed amendment does not:

1. Involve a significant increase in the probability or consequences of an accident previously analyzed. The increased surveillance for fires in the area below the control room structural steel, when the fire suppression system is inoperable, has the potential to reduce the consequences and probability of turbine building fires, and therefore does not increase the probability or consequences of an accident previously analyzed.

The reduction in the number of smoke detectors will not affect any design basis event. There are no cable trays or transient combustibles in the vicinity of this detector which is intended to be removed. The change will not impact the ability to detect fires in the outer annulus, therefore the change will not affect previously analyzed accidents.

2. Create the possibility of a new or different kind of accident from any previously analyzed. The reduction in the number of smoke detectors and the increased surveillance for fires in the area below the control room structural steel does not change the way the plant is operated. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced. The modifications do not affect safety systems or components and, therefore, do not affect any design basis accident. Since no safety systems are affected by the proposed changes, there can be no affect on the probability of failure of any safety system. Therefore, the proposed Technical Specification changes do not create the probability of an accident or malfunction of a new or different type than any evaluated previously in the safety analysis report.

3. Involve a significant reduction in a margin of safety. Since the proposed changes do not have any impact on any design basis accident, there can be no impact on any protective boundary. Since there is no impact on any protective boundary as a result of the proposed changes, there can be no impact on any safety limit. The proposed changes have no impact on the basis of any Technical Specification. The proposed changes maintain the basis of the Technical Specifications in assuring adequate smoke detection and fire suppression.

Accordingly, the staff has proposed to determine that the application for amendment does not involve a significant hazards consideration.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Consumers Power Company, Docket No. 50-155, Big Rock Point Plant, Charlevoix County, Michigan

Date of amendment request: February 6 and November 2, 1987

Description of amendment request: The proposed amendment would formalize commitments in the Big Rock Point Plant security plan for a "call-in" program for off-duty guards from their residences.

Basis for proposed no significant hazards consideration determination: Based on the three criteria in 10 CFR 50.92, the proposed amendment for the Big Rock Point Plant does not involve significant hazards consideration as set forth below:

1. Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated since there is no change to any plant system or operating procedures. This amendment upgrades and formalizes requirements to restore the minimum

number of required armed responders due to an unexpected loss, for example due to illness, of a member of the security force. This program specifies the methods by which off-duty guards are "called-in" from their residences.

2. Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated since the plant's design and operating procedures remain unaffected. This change only addresses security measures (procedures) which do not involve any plant safety systems.

3. Does the proposed license amendment involve a significant reduction in a margin of safety?

The proposed amendment does not involve a significant reduction in a margin of safety since no change is made to the plant's design or operating procedures. The "call-in" program is considered reasonable because the probability of a security contingency event occurring during the short period of time while a guard is responding from his residence is considered very low due to the infrequent and unpredictable nature of these circumstances.

Accordingly, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: North Central Michigan College, 1515 Howard Street, Petoskey, Michigan 49770.

Attorney for licensee: Judd L. Bacon, Esquire, Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201.

NRC Project Director: Theodore Quay, Acting

Duke Power Company, et al., Docket No. 50-414, Catawba Nuclear Station, Unit 2, York County, South Carolina

Date of amendment request: May 24, 1988

Description of amendment request: The proposed amendment would revise License Condition 2.C.(11) of Catawba Unit 2 Facility Operating License, NPF-52, to delete Item 6 of Attachment 1. This item requires special inspections of Diesel Generator (DG) 2B main bearing number 7. Such inspections were the result of two failures of this bearing during preoperational testing in order to ensure that measures taken to prevent further recurrences were effective. The licensee stated that since January 17, 1986 to the present time, DG 2B main bearing number 7 has successfully sustained more than 360 starts and accumulated over 350 hours of operation. Inspection of bearing number 7 during End-of-Cycle 1 refueling outage following 333 starts and 316 hours of operation revealed no defects, abnormal appearance, or unusual readings. Thus, discontinuing future special inspections of DG 2B main bearing number 7 would not involve any adverse safety considerations.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The staff has reviewed the licensee's request for the above amendment and determined that should this request be implemented, it would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated because implementation of the proposed amendment would not change any of the assumptions used in the accident analysis. Operating experience has demonstrated the adequacy of DG 2B and of the measures taken to ensure proper alignment of main bearings. Therefore, this amendment would not affect DG 2B's capability to perform its intended safety function and would not increase the probability or consequences of an accident.

Also, it would not (2) create the possibility of a new or different kind of accident from any accident previously evaluated because the proposed amendment would not introduce any new modes of operation and would not involve any modification to the facility. Finally, it would not (3) involve a significant reduction in a margin of safety because operating experience and inspection results have demonstrated that main bearing number 7 is as reliable as any other DG bearing.

Accordingly, the Commission has determined that the above change involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duke Power Company, et. al., Docket No. 50-414, Catawba Nuclear Station, Unit, 2, York County, South Carolina

Date of amendment request: September 14, 1988

Description of amendment request: The proposed amendment would revise License Condition 2.C.(8)(b) of Catawba Unit 2 Facility Operating License, NPF-52, to allow an extension of time for the resolution of the Safety Parameter Display System (SPDS) issue. The extension of time would be for a period of approximately 10 months (from the completion of Unit second refueling outage until December 8, 1988). The modified License Condition 2.C.(8)(b) would then read "Prior to December 8, 1989, Duke Power Company shall add to the existing SPDS and have operational the following SPDS parameters: (a) residual heat removal flow, (b) containment isolation status, (c) stack radiation measurements, and (d) steam generator or steamline radiation. The actual value of test and all other SPDS variable should be displayed for operator viewing in easily and rapidly accessible display formats."

Basis for proposed no significant hazards consideration determination: Supplement 1 to NUREG-0737 required licensees to install and SPDS which provides a concise display of critical plant variables to control room operators to aid them in rapidly and reliably determining the safety status of the plant.

In February 1986, the NRC staff issued the low-power Facility Operating License, NPF-48, for Catawba Unit 2 along with Supplement 5 to the Safety Evaluation Report. Supplement 6 concluded that the Catawba SPDS does not fully meet the applicable requirements of Supplement 1 to NUREG-0737. However, since the staff did not identify any serious safety concerns with the existing system, the Catawba SPDS may be operated as an interim implementation until startup following the first refueling outage.

The SER identified five parameters and the backup display as modifications needing to be made to the Catawba SPDS. These requirements were imposed as License Condition 2.C.(9)(b) of the low-power Facility Operating License, NPF-48, and later as License Condition 2.C.(8)(b) in the full-power Facility Operating License, NPF-52.

On March 25, 1986, the licensee identified the requested changes as a plant-specific backfit and requested that the NRC staff prepare a backfit analysis. By letter dated June 13, 1986, the staff denied the licensee's backfit claim. On March 26, 1987, the licensee appealed the staff's denial of the backfit claim. By letter dated September 4, 1987, the staff concluded that 4 of the 5 parameters identified in Supplement 5 along with the backup displays should be added. One of the five parameters previously required, hot leg temperature, was already included as an input into SPDS.

By letter dated December 4, 1987, the licensee proposed that License Condition 2.C.(8)(b) of Catawba Unit 2 Facility Operating License NPF-52 be amended to (1) allow an extension of time for the resolution of the SPDS issue, and (2) make it consistent with NRC staff's conclusions contained in the September 4, 1987 letter. On February 18, 1988, the NRC approved the requested extension for one complete cycle of operation by the issuance of license amendment No. 32 for Catawba Unit 2.

By letter dated February 18, 1988, the licensee submitted a proposed final resolution of this issue. By letter dated May 13, 1988, the NRC staff accepted the licensee's proposal.

The SPDS is not a safety-grade system and is not intended to fulfill the post-accident monitoring requirements of Regulatory Guide 1.97. All parameters, including the addition the additional parameters, are already provided in the control room. It is, therefore, the licensee's conclusion that extension of the date of modification of the Catawba Unit 2 SPDS until December 8, 1989, does not involve any adverse safety considerations. The staff agrees with the licensee's evaluation for extending the implementation date by approximately 10 months.

The Commission has provided standards of determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license involves no significant hazards consideration if operation of the the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed amendment would not involve a significant increase in the probability of an accident previously evaluated because the SPD is provided as an aid to the operator, all parameters displayed on the SPDS are provided separately in the control room, and the SPDS is not used for control functions.

The proposed amendment would not create the possibility of a new or different kind of accident than previously evaluated because the design and operation of Catawba Unit 2 will not be affected.

The proposed amendment would not cause a significant reduction in a margin of safety. The extension of time in which to resolve the SPDS issue and perform required modifications would have no impact on safety margins because the SPDS is intended to aid the operators and is not relied upon as a safety system.

Based on the above consideration, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Duquesne Light Company, Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of amendment request: September 7, 1988

Description of amendment request: The Technical Specifications (TS) for Beaver Valley Unit 1 would be amended to impose requirements on the incore thermocouples, and reactor vessel level indicating system. In addition, the current reactor coolant system subcooling margins monitor specification would be modified to require at least one channel operable. These proposed changes reflect what the staff recommended in its safety evaluation dated May 12, 1987. The proposed changes also reflect the staff's technical position expressed in Generic Letter 83-37.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The proposed changes impose new and additional requirements on the instruments installed to detect inadequate core cooling. The staff has reviewed the designs of these instruments as stated above, and has found them acceptable. These changes would not affect any accident analysis in the FSAR since the instruments do not initiate any automatic functions during an accident, but only serve to provide useful information on relevant parameters to the plant operators. The information can be used by operators to help reduce consequences of accidents. Therefore, the answers to the first two questions are negative. The use of these instruments will not result in the need to modify any system set points. There is, therefore, no change in the margins of safety of any system.

On such basis, the staff proposes to determine that the requested amendment involves no significant hazards consideration.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Attorney for licensee: Gerald Charnoff, Esquire, Jay E. Silberg, Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of amendment requests: September 7, 1988

Description of amendment requests: The licensee proposes to make administrative changes to the Technical Specifications (TS) to achieve consistency throughout the TS, remove outdated material, make minor text changes, and correct errors. The changes are grouped into three categories and cover both units.

Category 1 changes deal with achieving consistency between the Unit 1 TS and the Unit 2 TS. First, the Bases for the reactor flow-low trip function will be clarified in both unit TS Bases statements. The format of Table 3.7-3 in the Unit 1 TS, Fire Hose Stations, will be changed to reflect the format contained for the similar table in the Unit 2 TS. One per cent delta K/K will be changed in TS 3.9.1 for Unit 1 to 1,000 pcm, an equivalent value. PCM values are used throughout both Units' TS. The word

"Section" for 6.5.2.7 in TS 6.5.2.10 for Unit 1 will be replaced with the word "Specification" to achieve consistency in the TS.

Category 2 changes deal with correction of errors. TS page 3/4 3-19 for Unit 1 has two "b" subitems under the loss of power function unit. The second "b" should be a "c". The word "irradiated" is not spelled correctly in TS 3.9.3 for Unit 1; this will be corrected. The action statement in TS 3.9.5 for Unit 1 has the word "fo" instead of the word "of", which would also be corrected. The specification number on pages 3/4 12-1, 3/4 12-11, and 3/4 12-12 for the Annual Radiological Environmental Operating Report for Unit 1 and Unit 2 should read 6.9.1.8, and not 6.9.1.11. The specification number on page 3/4 12-11 for the Semiannual Radiological Effluent Release Report for Unit 1 and Unit 2 should read 6.9.1.7, and not 6.9.1.10. The words "specified" and "operational" on Bases page B 2-1 for Unit 2 are not spelled correctly; this will be corrected. Action statements "c" and "d" for Unit 2 specification 3.3.3.6 reference Table 3.3-11; the correct reference is Table 3.3-10. Fire detection instruments for Unit 2 located in Table 3.3-11 have errors. For example, the two listed flame detectors are not flame detectors but are heat detectors. In addition, similar inaccuracies will be corrected. TS 4.6.1.1 for Unit 2 references specification 3.6.4; the correct reference is specification 3.6.3. The last sentence in TS 4.7.6.1.1 for Unit 2 references specification 5.1.3, but there is no specification 5.1.3; therefore the sentence would be deleted. The first sentence under Functional Tests on page 3/4 7-22 for Unit 2 has the word "last" instead of the word "least"; this will be corrected. Fire Zone 34 should not be included in TS 3.7.11.2 for Unit 2 because Fire Zone 34 never had automatic fire suppression; this was an accepted NRC deviation. The Fire Hose Stations in Table 3.7.4 for Unit 2 would be clarified to better identify the Fire Hose Station locations. TS 4.7.11.4 for Unit 2 requires the yard fire hydrants to be visually inspected once during March, April, or May and once during September, October, or November; however, the actual months would not be specified because the climate at the St. Lucie site is characterized as subtropical marine. Lastly, TS 6.14 for Unit 2, which addresses the Offsite Dose Calculation Manual (ODCM), references the PCP (Process Control Program). The reference should be the ODCM.

Category 3 changes deal with outdated and fully satisfied conditions placed as footnotes in the TS. Footnote (e) for Table 3.3-1 in the Unit 1 TS is no longer applicable. The footnote for Unit 1 TS implementing the degraded grid voltage TS prior to Cycle 7 restart on pages 3/4 3-11, 3/4 3-15, and 3/4 3-19 are no longer necessary since the specifications were implemented as required. In regard to Unit 2 TS, certain sprinkler systems identified in TS 3.7.11.2 were to be installed and operable prior to exceeding 5% of rated thermal power. These conditions have been satisfied and the footnote specifying this would be deleted.

The licensee also proposes to delete a Unit 2 license condition. License Condition 2.C.12 required the licensee to address the issue of heavy loads in two steps: prior to startup following the first refueling outage and prior to 30 days of startup following the second refueling outage. The first step was one of the subjects of a license amendment application dated January 25, 1985, and the second step is one of the subjects of this license application. License Condition 2.C.12 was one of the subjects of a staff evaluation dated September 13, 1988 in support of Amendment No. 34. The staff found the licensee met the entire license condition and it is no longer a part of the license. Therefore, the staff considers the licensee's request of deletion of the second part of License Condition 2.C.12 a moot request and will not take further action on it.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has addressed these standards. The staff has deleted the licensee's arguments as far as License Condition 2.C.12 is concerned, since it is no longer a part of the license. In regard the first standard, the licensee provided the following information:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

For the changes intended to achieve consistency throughout the Technical Specifications, the intent of the Specification will not be changed nor will operating limitations of the Technical Specifications be changed. For the changes which involve correction of errors in the Technical Specifications, the changes proposed are intended to solely correct typographical errors or omissions from the Technical Specifications.

For the changes which propose to delete outdated and fully satisfied footnotes..., the NRC Staff's evaluation of the effect of the equipment or procedures required by footnote, and its completion to fully satisfy the Technical Specification requirement.... were previously evaluated and determined not to significantly affect the probability or consequences of an accident previously evaluated. This change proposes solely to remove outdated footnotes from the Technical Specifications.

The changes do not affect assumptions contained in plant safety analyses, nor do they affect Technical Specifications that preserve safety analysis assumptions. Therefore, the proposed changes do not affect the probability or consequences of accidents previously analyzed.

The licensee addressed the second standard as follows:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes being proposed by FPL will not lead to material procedure changes or to physical modifications to St. Lucie Plant. Therefore, the proposed changes do not create the possibility of a new or different kind of accident.

Lastly, the licensee provided the following rationale to address the third standard:

Use of the modified specification would not involve a significant reduction in a margin of safety.

The changes being proposed by FPL do not relate to or modify the safety margins defined in and maintained by the Technical Specifications. Therefore, the proposed changes should not involve any reduction in a margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination analysis, and agree that the standards have been met.

Based upon the above, the staff propose to determine that the proposed changes do not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, et al., Docket No. 50-389, St. Lucie Plant, Unit No. 2, St. Lucie County, Florida

Date of amendment request: September 7, 1988

Description of amendment request: The amendment would change the value of Pa in Technical Specifications (TS) 3/4.6.1.1 entitled "Primary Containment Integrity," 3/4.6.1.2 entitled "Containment Leakage," and 3/4.6.1.3 entitled "Containment Air Locks." Pa is defined in Appendix J (Primary Reactor Containment Leakage Testing For Water Cooled Power Reactors) to 10 CFR Part 50 as the calculated peak containment internal pressure related to the design basis accident. The current value of Pa is 43.4 psig and represents the Main Steam Line Break Inside Containment (MSLBIC) peak containment internal pressure. The proposed value of 41.8 psig represents the Loss of Coolant Accident (LOCA) peak containment internal pressure. Pa is used to measure and calculate containment leakage rates in order to assure that radiological consequences as a result of an accident will not exceed the guidelines specified in 10 CFR Part 100.

The licensee's containment leakage rate TS (3/4.6.1.2) also permit reduced pressure testing. In this case, the allowable minimum pressure is one half of Pa. Thus, the licensee is proposing a test pressure of 20.9 psig instead of 21.7 psig when a reduced pressure test is conducted. Again, the reduced pressure testing is using the LOCA peak pressure as its basis, instead of the MSLBIC peak pressure.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee addressed the above three standards in the amendment application. In regard to the first standard, the licensee provided the following analysis:

Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment change does not involve a significant increase in the probability or consequences of an accident previously evaluated because the primary reactor containment is designed to accommodate, without exceeding the design leakage rate and with sufficient margin, the calculated pressure and temperature conditions resulting from a loss of coolant accident. This meets the requirement of 10 CFR 50 Appendix A Criterion 50 for the containment to retain its integrity during a loss of coolant accident. Satisfactory leak rate testing at the value of the peak calculated containment pressure following a loss of coolant accident provides the assurance required by the design basis 3/4.6.1.1 - Containment Integrity, that any release of radioactive materials will be restricted to that assumed in the safety analysis. The probability or consequences of an accident are not significantly increased because there is no change to the containment design basis nor the ability of the containment to perform the required function of preventing the release of radioactivity to the environment.

In connection to the second standard, the licensee stated:

Use of the modified specification would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The use of this modified specification cannot create the possibility of a new or different kind of accident from any previously evaluated since the design features of the primary reactor containment as required by Criterion 16 of 10 CFR 50 Appendix A are not altered. The testing at the calculated peak accident pressure during a loss of coolant accident demonstrates that the reactor containment and associated systems provide an essentially leak-tight barrier against the uncontrolled release of radioactivity to the environment. No new failure mode is introduced due to the change of test pressure, since the assurance of integrity at the calculated accident pressure is maintained by testing at the value.

With regard to the third standard, the licensee provides the following rationale:

Use of the modified specification would not involve significant reduction in a margin of safety.

The existing test pressure using the calculated peak pressure value for the main steam line break (MSLB) tests the containment to a higher pressure than is required. This could be considered as providing a greater margin of safety since testing at approximately 104% of calculated accident peak value insures [sic] that the actual pressure stress is accommodated. However, there is no requirement for the test pressure to be higher than the calculated design basis accident peak pressure. For purposes of protection from radiological releases, the peak loss of coolant accident (LOCA) pressure is appropriate and the peak MSLB pressure is not appropriate. As shown in St. Lucie Unit 2 Tables 15.0-4a and 15.6.6-12 the radiological consequences of a LOCA produce a minimum of 675 times the site boundary dosage as the inside containment MSLB. Article NE-3112.1 - Design Pressure, of 1986 ASME Boiler and Pressure Vessel Code, states that the design internal pressure shall not be less than 100% of the maximum containment internal pressure under conditions for which the containment function is required, i.e., LOCA event. Prior to being placed in service, the containment was successfully tested by being pressurized to 50 psig which verified the design pressure of 44 psig.

Therefore, the modified specification which establishes the peak accident containment pressure corresponding to the actual accident requiring containment integrity does not reduce any margin of safety. The containment vessel structural integrity requirement of Technical Specification 3/4.6.1.6 is met in that the design pressure of 44 psig is greater than 100% of the 41.8 psig which is the condition for which the containment function is required. Furthermore, this Technical Specification considers the higher MSLB pressure (43.4 psig) in the determination of containment structural integrity.

The staff has reviewed the licensee's no significant hazards consideration determination analysis. Based upon this review, the staff believes that the licensee has met the three standards.

The staff adds the following considerations in support of a no significant hazards consideration determination. The containment internal design pressure is 44 psig and the design leak rate is 0.50 percent by weight of the containment air per day. These design values will not be affected by the proposed change. The peak allowable (during operation) primary containment pressure of +0.40 psig (TS 3/4.6.1.4) will not change and coupled with the MSLBIC peak pressure of 43.4 psig or the LOCA peak pressure of 41.8 psig will ensure that the containment vessel will remain within its 44 psig design value, as specified in Section 5.2 of the TS entitled "Containment - Design Pressure and Temperature." The maximum allowable leak rate is a TS value (3/4.6.1.2 - Containment Leakage) and this will not change, as a result of the licensee's proposed change.

The proposed change to Pa will not change the accident analyses and resultant radiological consequences for the postulated LOCA and MSLBIC accident. In the case of a LOCA, the radiological consequences are within the guidelines of 10 CFR Part 100. The significant containment parameter for this analysis is the containment leakage rate and this will not change. Implicit with the containment leakage rate is the associated peak containment pressure associated with the LOCA. The use of the LOCA peak pressure for Pa will ensure that the leakage rate is measured and calculated appropriately.

In the case of a MSLBIC, the radiological consequences are well within the guidelines of 10 CFR Part 100. The licensee stated that (1) the LOCA typical dose is 675 times the MSLB thyroid dose and 2.6×10^5 times the

MSLB whole body dose at the site boundary for the 0 to 2 hour dose calculations, and (2) the total event comparison shows an even larger difference. The significant containment parameter for this analysis is the containment leakage rate and this will not change. Implicit with the containment leakage rate is the associated MSLBIC peak containment pressure. Although the licensee will now use the LOCA peak pressure for Pa instead of the MSLBIC peak pressure, this will not significantly affect the radiological consequences which are much smaller for the MSLBIC case versus the LOCA case.

Based upon the above discussion, the staff proposes to determine that the proposed change does not involve a significant hazards consideration.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 33450

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendments request: September 21, 1988

Description of amendments request: The proposed amendments would revise Section 3.1.2 of the Technical Specifications (TS) by incorporating modified pressure and temperature (P/T) limits for the Reactor Coolant System (RCS) and pressurizer. These P/T limits take the form of parametric curves which define the permissible operating envelope during reactor heatup, cooldown, criticality, and inservice leak and hydrostatic testing. Because the P/T limits are based partly on the most limiting nil-ductility temperature for the reactor vessel, it is necessary to periodically revise the limits to account for the effects of irradiation and other factors on the nil-ductility temperature. The P/T limits currently in the TS are applicable up to 10 effective full power years (EFPY). The proposed change will replace these P/T curves with revised curves applicable up to 20 EFPY. The Turkey Point reactor pressure vessel surveillance program provides updated materials data for refining the estimated effects of irradiation on the nil-ductility temperature.

In addition to the proposed modification of P/T limits, the amendments would also convert the TS to the standard format and revise the "Bases" section to be consistent with the revised P/T curves.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed change in accordance with the standards of 10 CFR 50.92 and has determined that operation of Turkey Point Units 3 and 4 in accordance with the proposed amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The pressure/temperature (P/T) limit curves in the Technical Specifications are conservatively generated in accordance with the fracture toughness requirements of 10 CFR [Part] 50, Appendix G as supplemented by Appendix G of Section III of the ASME Boiler and Pressure Vessel Code. The RT_{NDT} values for the revised curves are based on Regulatory Guide 1.99, Revision 2, dated May 1988, as discussed in Westinghouse Electric Corporation Report titled "Reactor Vessel Heatup and Cooldown Limit Curves for Normal Operation." The analysis of reactor vessel material irradiation surveillance specimen revised curves in conjunction with the surveillance specimen program ensures that the reactor coolant pressure boundary will behave in a non-brittle manner and that the possibility of rapidly propagating fracture is minimized.

The revised pressure/temperature limit curves do not represent a significant change in the configuration or operation of the plant and thus do not involve an increase in either the probability or the consequences of accidents previously evaluated.

(2) Create the possibility of a new or different kind of accident.

The analysis performed has resulted in revised P/T limits based on the fracture toughness requirements of 10 CFR [Part] 50, Appendix G. Since there is no significant change in the configuration or operation of the facility due to the proposed amendment, use of the revised P/T limits will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed change will not involve a significant reduction in a margin of safety because the requirements of 10 CFR [Part] 50, Appendix G are satisfied.

In addition, with respect to the reformatting change, the Commission has provided guidance concerning the application of the standards for determining whether a significant hazards consideration exists by providing certain examples [(51 FR 7751)] of amendments that are considered not likely to involve a significant hazards consideration. Example (i) relates to a purely administrative change to Technical Specifications: for example, a change to achieve consistency throughout the Technical Specifications, correction of an error, or a change in nomenclature. The proposed change reformatting the existing requirements in TS 3.1.2 is similar to example (i) in that it is an administrative change which states the requirements in a format consistent with that of the Standard Technical Specifications and does not involve technical or plant modifications.

Therefore, operation of the facility in accordance with the proposed amendment would pose no threat to the public health and safety, and would not involve a significant hazards consideration.

The staff notes that the licensee has determined the new P/T limits using the latest staff guidance in Regulatory Guide 1.99, Revision 2, dated May 1988. It is routine for licensees to refine their P/T limit curves based on the latest information available from reactor vessel materials surveillance programs. The revisions to the curves appear to be modest and are based on more data than were available when the 10 EFPY curves were developed. The changes in format are administrative in nature and, therefore, have no affect on the public health and safety. The revised "Bases" reflect the new P/T curves and provide a better understanding for the specific TS but do not impact the plant configuration or operation. For these reasons, and those given (above) by the licensee, the staff agrees with the licensee's determination, and therefore proposes to determine that the amendments do not involve a significant hazard consideration.

Local Public Document Room location: Environmental and Urban Affairs Library, Florida International University, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: March 27 and November 24, 1987, and January 6, 1988

Description of amendment request: In accordance with the requirements of 10 CFR 73.55, the licensees submitted an amendment to the Physical Security Plan for the Vogtle Electric Generating Plant to reflect recent changes to that regulation. The proposed amendment would modify paragraph 2.E. of Facility Operating License No. NPF-68 to require compliance with the revised Plan.

Basis for proposed no significant hazards consideration determination: On August 4, 1986 (51 FR 27817 and 27822), the Nuclear Regulatory Commission amended Part 73 of its regulations, "Physical Protection of Plants and Materials," to clarify plant security requirements to afford an increased assurance of plant safety. The amended regulations required that each nuclear power reactor licensee submit proposed amendments to its security plan to implement the revised provisions of 10 CFR 73.55. The licensee submitted its revised plan on March 27 and November 24, 1987, and January 6, 1988, to satisfy the requirements of the amended regulations. The Commission proposes to amend the license to reference the revised plan.

In the Supplementary Materials accompanying the amended regulations, the Commission indicated that it was amending its regulations "to provide a more safety conscious safeguards system while maintaining the current levels of protection" and that the "Commission believes that the clarification and refinement of requirements as reflected in these amendments is appropriate because they afford an increased assurance of plant safety."

The Commission has provided guidance concerning the application of the criteria for determining whether a significant hazards consideration exists by providing certain examples of actions involving no significant hazards considerations (51 FR 7750). One of these examples of actions involving no significant hazards considerations is example (vii) "A change to conform a license to changes in the regulations, where the license change results in very minor changes to facility operations clearly in keeping with the regulations." The changes in this case fall within the scope of the example. For the foregoing reasons, the Commission proposes to determine that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Altanta, Georgia 30043.

NRC Project Director: David B. Matthews

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of amendment request: August 12, 1988

Description of amendment request: The proposed amendment revises Technical Specification 4.5.2, "ECCS Subsystems - Tavg Greater Than or Equal to 350° F" and its bases. The revision clarifies that Residual Heat Removal Cold Leg Injection Valves HV-8809A and HV-8809B may be temporarily closed in Mode 3 during leakage testing of reactor coolant system pressure isolation check valves.

Basis for proposed no significant hazards consideration determination: The proposed change specifies that valves HV-8809A and B may be temporarily closed in Mode 3 during leak testing of Reactor Coolant System (RCS) pressure isolation check valves. Leak testing of these check valves is required following each refueling outage, following valve realignment or maintenance, and prior to entering Mode 2 following a cold shutdown of 72 hours or more (if not tested in the previous 9 months). The optimum plant condition for leak testing of the pressure isolation check valves is Mode 3 at full RCS pressure, just prior to entering Mode 2. At this point, valve disturbances are complete and better seating of the check valves will produce more meaningful test results.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR Part 50.92. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with a proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In regard to the proposed amendment, the licensee has determined the following:

1. The proposed change will not significantly increase the probability or consequences of an accident previously evaluated. Closure of valves HV-8809A and B to allow RCS pressure isolation check valve testing in Mode 3 has no impact on any mechanism that could potentially cause a loss of coolant accident (LOCA). The probability of a LOCA is therefore not increased. The consequences of a LOCA occurring with either HV-8809A or B closed are bounded by previous analyses of a LOCA in Mode 3 with portions of the emergency core cooling system (ECCS) disabled. Those previous analyses were performed assuming flow was available from one residual heat removal (RHR) pump, one intermediate head safety injection (SI) pump, and one high head charging pump. Further, the analyses assumed that automatic SI actuation on low pressurizer pressure was blocked; thus, only automatic SI actuation on containment high pressure was available. In actuality, during leak testing of the pressure isolation check valves, all ECCS pumps and accumulators (above 1000 psig) are available. In addition, automatic SI actuation on low pressurizer pressure is available above approximately 1900 psig when the operator unblocks this signal. The analyses showed that adequate ECCS flow was available to meet core cooling requirements and that the ECCS design and licensing bases were satisfied. The consequences of a LOCA are, therefore, not increased.

2. The proposed change does not create the possibility of a new or different kind of accident than any accident previously evaluated. The change does not introduce any new equipment into the plant or require any existing equipment to operate in a different manner from which it was designed to operate. The change, therefore, does not create a new failure mode, and a new or different kind of accident could not result.

3. The proposed change does not significantly reduce a margin of safety. The change has no effect on safety limits or limiting safety system settings. Probabilistic analyses have shown that RHR or low head SI unavailabilities are not significantly increased by periodic, temporary closures of valves HV-8809A and B for pressure isolation check valve leak testing. Margins of safety are, therefore, not significantly reduced.

The NRC staff has reviewed the licensee's determination and concurs with its findings.

Accordingly, the Commission proposes to determine that the proposed change involves no significant hazards consideration.

Local Public Document Room location: Burke County Public Library, 412 Fourth Street, Waynesboro, Georgia 30830.

Attorney for licensee: Mr. Arthur H. Domby, Troutman, Sanders, Lockerman and Ashmore, Chandler Building, Suite 1400, 127 Peachtree Street, N.E., Atlanta, Georgia 30043

NRC Project Director: David B. Matthews, Director

Illinois Power Company, Soyland Power Cooperative, Inc., Western Illinois Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of amendment request: May 18, 1988

Description of amendment request: This proposed amendment would revise Technical Specification Sections 3/4.3.7.8 and 4.7.2.e.2 and Bases Section 3/4.3.7.8 in order to delete the requirement for the chlorine detection system. The proposed revision is based on the fact that the chlorine hazard is being removed from the site, i.e., all liquid chlorine is being removed from the site and there are no other significant depots of chlorine within a five mile radius of the site. Furthermore, there is negligible transportation of chlorine in the vicinity of the site.

The licensees intend to replace the existing chlorination system on site and at the site sewage treatment plant, the only other location within a five-mile radius of the control room in which chlorine is stored, with a sodium hypochlorite or equivalent system that obviates the use of liquid chlorine for water treatment. Thus, the threat to control room habitability from an accidental release of chlorine on site will be removed.

Basis for Proposed No Significant Hazards Consideration Determination: The staff has evaluated this proposed amendment and determined that it involves no significant hazards considerations. According to 10 CFR 50.92(c), a proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the amendment would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or

(3) Involve a significant reduction in a margin of safety.

The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated because deleting the Operability and Surveillance requirements for the chlorine detection system is contingent upon the removal of all major depots or storage tanks of chlorine that constitute a hazard as described in Regulatory Position C.1 of Regulatory Guide 1.78. This, in conjunction with the negligible risk associated with a transportation accident in the vicinity of Clinton (as determined according to the guidelines of Regulatory Position C.2 of Reg. Guide 1.78), makes the probability or consequences of a chlorine accident negligible for Clinton.

The proposed change does not create the possibility of a new or different kind of accident from any accident previously evaluated because the associated plant modification for converting to a sodium hypochlorite or equivalent system only affects the means by which the water is chlorinated and has no direct impact on the design or operation of plant systems other than the chlorination system itself.

The proposed change does not involve a significant reduction in a margin of safety because the margin of safety with respect to a chlorine gas release has been maximized by removal of chlorine gas from the site. The only safety contribution of the chlorine detection system was in the detection of chlorine release. With no chlorine source present, deletion of the chlorine detection system can not affect the margin of safety.

For the reasons stated above, the staff believes this proposed amendment involves no significant hazards considerations.

Local Public Document Room location: Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727

Attorney for licensees: Sheldon Zabel, Esq., Schiff, Hardin and Waite, 7200 Sears Tower, 233 Wacker Drive, Chicago, Illinois 60606

NRC Project Director: Daniel R. Muller

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 19, 1988

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS's) to reflect new fuel loaded into the core for Cycle 10 operation. The proposed changes update the fuel thermal limits of Section 3.12 and upgrade the fuel cladding integrity Safety Limit of Section 1.1.A.

As new fuel bundle types are added to the reactor core, the design basis Loss-Of-Coolant Accident (LOCA) must be reanalyzed and the Technical Specifications updated to include the operating limits of these new bundle types. As part of the reload for Cycle 10, General Electric Company (GE) has reanalyzed the design basis event for the new bundle type being added to the core. The TS revision will add the Maximum Average Planar Linear Heat Generation Rate (MAPLHGR) operating limits for the new bundle type.

Also as part of the reload licensing process for Cycle 10, GE has reanalyzed the most limiting abnormal operational transients as specified in Table 15.0-1 in the updated DAEC Final Safety Analysis Report. The TS change will revise the Minimum Critical Power Ratio (MCPR) operating limits, based on this analysis, for all fuel types to be used in Cycle 10 operation.

The new fuel assemblies being added to the core are the advanced GE8X8EB design. The NRC staff previously approved this fuel design and revised MCPR operating limits in amendments to the GE Standard Application for Reactor Fuel (GESTAR-II).

In addition, various administrative changes are being made, such as revising figure numbers, updating the Table of Contents, and renumbering pages.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

In reviewing this proposed request for Technical Specification changes, the licensee has concluded:

(1) The proposed change will not involve any significant increase in the probability or consequences of an accident previously evaluated because no changes are being made to the facility or its equipment other than the introduction of the higher enrichment GE8X8EB fuel. This fuel type is essentially the same as the fuel currently in place and has been found acceptable for use by the NRC staff in Amendment 10 to GESTAR-II.

GE analysis of the LOCA for the new fuel was performed using the NRC staff-approved SAFER/GESTR models. This analysis provided the new MAPLHGR operating limits which assure that the requirements of 10 CFR 50.46 are met during plant operation, so there is no significant increase in the probability or consequences of an accident previously evaluated.

The GEMINI transient modeling methodology was used to re-evaluate the most limiting operational transients for all bundle types used in Cycle 10. The new MCPR operating limits resulting from this

analysis will assure the plant is operated with acceptable fuel cladding integrity safety limits. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

Changes in fuel design and modeling methods have enabled GE to upgrade the Minimum Critical Power Ratio Safety Limit to 1.04 while maintaining all fuel performance criteria specified in the DAEC Final Safety Analysis Report. The NRC has generically approved this upgrade (NRC SER to Amendment 14 to GESTAR-II). Therefore it will not involve a significant increase in the probability or consequences of an accident previously evaluated.

The administrative changes will not involve significant increases in the probability or consequences of an accident previously evaluated.

(2) The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated because the facility is not being changed except for the introduction of the higher enrichment fuel. Since this fuel is essentially the same as the fuel currently in place and has been found acceptable for use per Amendment 10 to GESTAR-II, there is no possibility that its use will create a new or different kind of accident.

The MAPLHGR curve for this new fuel and revised MCPR operating limit are specified to assure the plant does not exceed applicable safety limits and thus, do not, in and by themselves, create the possibility of a new or different accident from previously evaluated.

Upgrading the MCPR Safety Limit will not create the possibility of a new or different kind of accident from previously evaluated because the new Safety Limit value satisfies all fuel performance criteria specified in the updated DAEC Final Safety Analysis Report. This change has been generically approved for use by the NRC staff in Amendment 14 to GESTAR-II.

The administrative changes will not create the possibility of a new or different kind of accident than previously evaluated.

(3) The proposed change will not involve a significant reduction in the margin of safety because the higher enrichment fuel is designed to meet all standards of safety as the fuel previously described in GESTAR II.

The addition of the new fuel's MAPLHGR operating limit will assure the acceptance criteria of 10 CFR 50.46 will be met. Therefore, this change will not involve a reduction in the margin of safety since the margin of safety is defined by the acceptance criteria of 10 CFR 50.46.

Alteration of the MCPR operating limit curve is based on maintaining the margin of safety as specified in the FSAR during the most limiting operational transients. Therefore, this change assures the plant is operated within acceptable fuel cladding safety limits and thus, does not involve a significant reduction in the margin of safety.

The upgrade of the MCPR Safety limit to 1.04 meets all fuel performance criteria specified in the DAEC FSAR. Therefore, this change will not significantly reduce the margin of safety.

The administrative changes will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. In addition, the Commission has published examples (51 FR 7751) of proposed amendments that are likely to be found to involve no significant hazards considerations, if operation of the facility in accordance with the proposed amendment involves only one or more of the following: "...(iii) for a nuclear power reactor, a change resulting from a nuclear reactor core reloading, if no fuel assemblies significantly different from those found previously acceptable to the NRC for a previous core at the facility in question are involved. This assumes that no significant changes are made to the acceptance criteria for the technical specifications, that the analytical methods used to demonstrate conformance with the technical specifications and regulations are not significantly changed, and that NRC has previously found such methods acceptable."

The proposed amendment fits the above example, as discussed in the licensee's analysis. Therefore, the NRC staff has made a proposed determination that the proposed amendment involves no significant hazards consideration.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: August 29, 1988.

Description of amendment request: The proposed amendment would revise Technical Specification Table 3.2-B to change the setpoints for the Uninterruptible AC and Instrument AC systems undervoltage relays from 220 VAC 275% to 110 VAC 275%. This change is necessary because the licensee intends to modify the power supplies to these systems from a 120/240 VAC split-phase system to a Class 1E, 120 VAC single-phase system, in order to meet Regulatory Guide 1.97 (Revision 2) requirements.

The licensee also proposes other administrative changes, including deletion of a surveillance requirement that was unintentionally retained in the Technical Specifications in a previous license amendment.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee has evaluated this proposed Technical Specification change and has concluded:

(1) This proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change will permit the installation of upgraded power supplies for the Uninterruptib1e AC and Instrument AC electrical systems. The function of the Uninterruptible AC and Instrument AC undervoltage relays is to provide a signal for control room annunciators when a degraded voltage condition or loss of power to these systems is sensed. This function remains unchanged. Conversion of the power supplies from a 120/240 VAC split-phase system to a 120 VAC single phase system requires changing the undervoltage relays from 240 VAC (rated voltage) relays to 120 VAC (rated voltage) relays, and therefore the undervoltage relay setpoints must be changed.

The changes will not alter the function of any equipment that is powered by the Uninterruptible AC or Instrument AC electrical systems. Both systems will continue to have the same number of alternate power sources. However, the improved technology and Class 1E (as defined by IEEE Standard 323) qualification of the new power supply systems will improve the reliability as compared to the existing power supplies. Therefore the probability of an accident previously evaluated is not increased.

The consequences of accidents previously evaluated in the Final Safety Analysis Report (FSAR) are not increased. A loss of power to the Uninterruptible AC and Instrument AC electrical systems cannot be caused by the annunciator setpoint changes. The setpoint changes will not degrade operator response and a failure of the new power supplies is no worse than failure of the existing power supplies. Failure of existing power supplies for the Uninterruptible AC and Instrument AC electrical systems was previously analyzed in the DAEC FSAR and these analyses will remain unchanged by the proposed TS changes.

(2) This proposed amendment does not create the possibility of a new or different kind of accident from any previously

evaluated. The setpoint changes for the Uninterruptible AC and Instrument AC electrical system undervoltage relays will not change the function of these relays (to activate a control room annunciator when bus voltage is degraded or power to the bus is lost).

The undervoltage relays for the Uninterruptible AC and Instrument AC electrical systems do not provide any automatic trip, automatic transfer, or initiation signals to any equipment that mitigates an accident, nor are the relays an accident initiator. The setpoint changes will not adversely affect the performance of the new power supplies or any of the loads connected to the busses. The new setpoints were determined using a methodology similar to that used to establish the existing setpoints and are consistent with vendor recommendations.

(3) This amendment does not involve a reduction in a margin of safety because the change involves only an annunciator setpoint. The operation or reliability of the Instrument AC and Uninterruptible AC electrical systems will not be degraded and none of the system loads will be adversely affected by this setpoint change. There are no automatic functions associated with these undervoltage relays and the annunciator function remains unchanged. The new setpoints were determined using a methodology similar to that used to establish the existing setpoints and are consistent with vendor recommendations. Consequently, control room operator response is judged not to be degraded or impaired by the revised setpoints. Therefore, no margin of safety is affected by this change.

The proposed administrative changes will not increase the probability or the consequences of any previously analyzed accident, introduce any new accident, or reduce an existing margin of safety. The NRC staff has reviewed the licensee's proposed no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the proposed TS changes involve no significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy Center, Linn County, Iowa

Date of amendment request: September 2, 1988

Description of amendment request: The proposed amendment would revise the Duane Arnold Energy Center (DAEC) Technical Specifications (TS's) to support the changes to Containment and Torus Water Level instrumentation. The amendment would update Tables 3.2-F, 3.2-H, 4 2-H and the Notes for Table 3.2-H to reflect the new ranges, surveillance requirements and nomenclature of the level instruments. In addition, administrative errors in Tables 3.2-F, 3.2-H and 4.2-F would be corrected to reflect actual plant conditions. The proposed amendment would implement changes that were approved by the NRC staff as part of the licensee's Detailed Control Room Design Review (DCRDR).

As part of the DCRDR program, the range for measurement of containment water level would be revised to reflect the actual height of the containment penetration at which measurements are made and read (only positive values). This would allow a direct comparison between containment and torus water level. In addition, the containment water level instrument would be relocated to Table 3.2-H to facilitate use by operators and would be added to Table 4.2-H to assure the surveillance requirements are met. Notations would be added to Table 3.2-H to clarify that torus water level is the primary indication and that containment water level is solely a backup indication.

The stated range of torus water level measurement would be altered to reflect the actual height of the level instrument and torus penetrations. The reduced range would meet all criteria specified in the Regulatory Guide 1.97 and FSAR Section 6.2.1.5 and would be more accurate and indicative of actual torus water level. In addition, descriptions in Table 4.2-F would be changed from Suppression Chamber Temperature and Water Level to Torus Water Temperature and Water Level, respectively, for nomenclature consistency.

The stated ranges of instruments for torus water temperature (Table 3.2-F) and drywell pressure (Table 3.2-H) would be revised to correct errors.

Local indicators for drywell and torus pressure in Tables 3.2-F and 4.2-F would be deleted to complete the removal of the drywell/torus differential pressure system from the Technical Specifications. This system was deleted in Amendment 137.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards (10 CFR 50.92(c)) for determining whether a significant hazards consideration exists. A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; (2) create the possibility of a new or different kind of accident from any accident previously evaluated or (3) involve a significant reduction in a margin of safety.

In reviewing this proposed request, the licensee has concluded that:

(1) The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The revisions to the tables are purely administrative in nature. Changing the torus and containment instrument ranges does not, in any way, alter the purpose or function of these instruments. The requirement for torus water level indication, as specified in Section 6.2.1.5 of the FSAR and Regulatory Guide 1.97, remains satisfied. Relocating the containment water level instrument from Table 3.2-F to Table 3.2-H improves consistency and human factors of the TS. Adding the notation that containment water level is solely a backup indication for torus water level indication merely clarifies the requirements intended in Amendment 134. Adding surveillance requirements for the containment water level instruments results in more stringent control of calibration and testing requirements than previously existed.

Correcting errors in the statements of ranges of the torus water temperature and drywell pressure instruments results only in improved Technical Specification accuracy. No physical changes to the instruments are being made, nor will their purpose or function be altered.

The local indicators for drywell and torus pressure listed in Tables 3.2-F and 4.2-F were part of the drywell/torus differential pressure system. The Mark I program made this system unnecessary. It was deleted from the Technical Specifications as part of Amendment 137 which should have included these instruments. They are being deleted now to correct omissions from Amendment 137 and to simplify the Technical Specification.

Based on the above discussion, none of these administrative changes involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) The proposed amendment does not create the possibility of a new or different kind of accident. The minor physical changes to these instruments do not alter their purpose or function. The relocation and addition of surveillance requirements for containment water level only improves human factors and provides greater assurance of satisfactory operation by clarifying existing requirements. The changes in nomenclature, deletion of unnecessary instrumentation and correction of errors improves human factors and Technical Specification accuracy.

(3) The proposed amendment does not involve a significant reduction in the margin of safety. The correction of stated instrument ranges in the tables is purely administrative

in nature. In fact, the improved accuracy and ease of instrument comparison will better enable the operators to respond to accident situations. The relocation and addition of surveillance requirements for containment water level will only assure that satisfactory instrument operation is maintained by clarifying the existing requirements. The correction of errors, changes in nomenclature and deletion of unnecessary instrumentation will improve the human factors of the Technical Specifications.

The NRC staff has reviewed the licensee's proposed no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the amendment would not involve significant hazards considerations.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Attorney for licensee: Jack Newman, Esquire, Kathleen H. Shea, Esquire, Newman and Holtzinger, 1615 L Street, NW., Washington, DC 20036.

NRC Project Director: John N. Hannon.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 2, 1988

Description of amendment request: The proposed amendment would delete Millstone Unit 3 Technical Specification Table 3.6-2 which lists containment isolation valves. The requirement for operable containment isolation valves would be retained in Technical Specification 3/4.6.3. The Technical Specification basis requires FSAR Table 6.2-65 to specify the listing of required containment isolation valves. Licensee changes to the FSAR listing shall be made in accordance with 10 CFR 50.59 and approved by the Plant Operations Review Committee.

In addition, certain manual valves that could be opened during operation are retained in Technical Specifications. Technical Specification Table 3.6-2 allowed periodic opening of these valves during modes 1 through 4 for various reasons, as long as they remained administratively controlled to specify rapid closure under accident conditions.

Basis for proposed no significant hazards consideration determination: The Millstone Unit 3 TSs currently contain a number of equipment lists that are the subject of Limiting Conditions for Operation (LCOs) and Surveillance Requirements (SR). In each case, these lists only contain equipment identifications and no other LCO/SR related information, (e.g., trip setpoints) are involved. The licensee has proposed that the equipment lists contained in TS Tables 3.6-2 be incorporated and maintained in the Millstone Unit 3 FSAR.

In the event that changes are needed to the information to be contained in the FSAR, the proposed changes would be evaluated in accordance with the process detailed in 10 CFR 50.59 and approved by the Plant Operations Review Committee. The licensee has also proposed removing references to the Table in the subject TS but otherwise, the LCOs and SRs would remain unchanged.

Certain manual valves are permitted to be opened during operation as long as they are administratively controlled. Operation of these valves currently allows testing, maintenance and other activities on the following systems: Fire protection, post accident sampling, hydrogen recombiner, service air, RCS loop fill, demineralized water and containment vacuum. License control of these valves when opened in Modes 1 through 4 requires rapid closure if necessary, to isolate the containment during accident conditions. This specific listing has been included in a note in Technical Specification 4.6.1.1.a. and any future changes to this list will be controlled by the license amendment process.

The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c).

We have reviewed the licensee's proposed changes to the TS and conclude that the proposed changes will not:

(1) Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed. Since there are no proposed changes to the LCO or SR, no changes in operability of the subject equipment will occur. Accordingly, there will be no effect on previously analyzed accident.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. Since there are no changes in the way the plant is operated, the potential for an unanalyzed accident is not created. No new failure modes are introduced.

(3) Involve a significant reduction in a margin of safety. Since the proposed changes do not affect the consequences of any accident previously analyzed, there is no reduction in any margin of safety.

Accordingly, the staff has made a proposed determination that the application for amendment involves no significant hazards consideration.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, One Constitution Plaza, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of amendment request: August 31, 1988

Description of amendment request: The proposed license amendment would: (1) correct an error in existing Technical Specification (TS) action statement 3.7.B.1.b to specify that the Standby Gas Treatment System is required, consistent with the existing definition of Secondary Containment Integrity in TS Section 1.0; (2) incorporate paragraph 4.7.A.2.d which was inadvertently deleted by License Amendment No. 55; and (3) to make other editorial corrections.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists [10 CFR 50.92(c)], and has also published certain examples for making such a determination (51 FR 7751). One of the examples published is (i) "A purely administrative change to the technical specifications: for example, a change to achieve consistency throughout the technical specifications, correction of an error, or a change in nomenclature."

The licensee has evaluated the proposed changes against the standards and examples provided by the Commission and has concluded that the changes are administrative in nature. The Commission's staff has reviewed the licensee's evaluation and agrees that the changes are administrative, correcting errors to achieve Technical Specification consistency. Accordingly, the Commission proposes to determine that the proposed amendment does not involve a significant hazards consideration.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Attorney for licensee: Gerald Charnoff, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Theodore Quay, Acting.

Philadelphia Electric Company, Docket No. 50-352, Limerick Generating Station, Unit 1, Montgomery County, Pennsylvania

Date of amendment request: May 11, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TSs) to add new valves and controls to the existing list of containment isolation valves which require periodic surveillance. The amendment would also delete Note 28 on page 3/4 6-43 which would no longer be applicable.

As discussed in the staff's Safety Evaluation Report (SER) related to the operation of Limerick Generating Station, Units 1 and 2, NUREG-0991, the staff concluded that the Limerick Containment Isolation System met the requirements of General Design Criterion 56 except in certain instances pertaining to the Hydrogen Recombiners, the Drywell Chilled Water System (DCW) and the Reactor Enclosure Cooling Water Systems (RECW). The staff's position was that a second containment isolation valve was required in the lines to and from the Hydrogen Recombiners penetrating containment. For the RECW and DCW, the staff's position was that the remote-manual isolation valves should be replaced with automatic isolation valves with diverse isolation signals. This applied to the RECW inboard and outboard isolation valves and the DCW outboard isolation valves in all the supply and return lines.

When Facility Operating License NPF-39 was issued, it contained Conditions (10) and (11) requiring that the above modifications be installed prior to startup following the first refueling outage. Limerick 1 was shutdown from May 15, 1987 to August 31, 1987 for the first refueling outage. The required modifications were completed during the outage. The purpose of the amendment is to add the valves which were installed as part of the modifications to the list of containment isolation valves requiring periodic surveillance.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin safety.

The licensee's analysis contained in their May 11, 1988 application states the following in response to the three NRC criteria referenced above:

(1) The proposed changes to the Technical Specifications to include the additional primary containment isolation valves do not involve a significant increase in the probability or consequences of an accident previously evaluated.

As evaluated in Section 6.2.4.3 of the Limerick Final Safety Analysis Report, (FSAR), the main objective of the containment isolation system is to prevent release to the environment of radioactive materials. This is accomplished by isolation of system lines penetrating the primary containment. Redundancy is provided so that active failure of any single valve or component does not prevent containment isolation.

The evaluation in Section 15.6.5 of the FSAR concludes that the primary containment is designed to maintain pressure integrity in the event of an instantaneous rupture of the largest single primary system piping within the structure, while also accommodating the dynamic effects of the pipe break. Therefore, any postulated LOCA would not exceed the containment design limits. The additional automatic features and valves to be installed in the primary containment isolation system will enhance the plants ability to isolate the primary containment in the event of an accident.

Based on the design which meets the requirements of SRP 6.2.4, and NRC Regulatory Guide 1.141, the valves and automatic features which are being added to the Hydrogen Recombiners; The Reactor Enclosure Cooling Water and the Drywell Chilled Water Systems, and based on the previous approval by the NRC Staff, the proposed changes to the Technical Specifications do not involve an increase in the probability or consequences of any previously evaluated accidents.

(2) The proposed changes to the Technical Specifications to include the additional primary containment isolation valves do not create the possibility of a new or different kind of accident from any previously evaluated.

The Containment Isolation System design was evaluated in the Final Safety Analysis Report (FSAR) and the SER. In the FSAR, the system design was evaluated as follows:

- Code Class and Seismic Design - Section 3.2
- Missile Protection - Section 3.5
- Protection Against Dynamic Effects Associated with the Postulated Rupture of Piping - Section 3.6
- Environmental Design - Section 3.11
- Valve Endurance/Operability - Section 3.9.3
- Leakage - Manual Valves - Section 5.2.5
- Containment Isolation - Section 6.2.4
- Leakage Testing - Section 6.2.6
- Essential/Non-Essential Classification - Table 6.2-27
- Normal/Accident Environmental Conditions - Section 3.11
- Control/Automatic Systems - Section 7.3.1.1.2

Further, the design and implementation of this modification has no effect on the ability to safely shutdown the Plant in the event of a fire, as required by Appendix R of Title 10 CFR Section 50.

Based on the previous evaluation contained in the FSAR and based upon the previous NRC acceptance of these changes in the SER, and based on the modifications meeting the provisions of NRC Regulatory Guide 1.141, the proposed changes to the Technical Specifications listing these additional valves along with the existing primary containment isolation valves, do not create the possibility of a new or different kind of accident from any previously evaluated.

(3) The proposed changes to the Technical Specifications to include the additional primary containment isolation valves do not involve a significant reduction in a margin of safety.

The Containment Isolation System is designed to prevent or limit the release of radioactive materials that may result from postulated accidents. This is accomplished by providing isolation barriers in lines that penetrate primary containment. The additional valves and controls being added allow for automatic isolation of the primary containment and their inclusion in the list of primary containment isolation valves does not involve a reduction in a margin of safety.

The staff has reviewed the licensee's analysis and agrees with it. Therefore, we conclude that the proposed amendment satisfies the three criteria listed in 10 CFR 50.92(c). Based on that conclusion, the staff proposes to make a "no significant hazards" determination.

Local Public Document Room location: Pottstown Public Library, 500 High Street, Pottstown, Pennsylvania 19464.

Attorney for licensee: Conner and Wetterhahn, 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 7, 1988

Description of amendment request: The proposed changes to Technical Specification pages 240 h, o, and q reflect a modification (No. 2390) to the

Diesel Generator Building Carbon Dioxide Fire Suppression (Cardox) System to correct design deficiencies. There are four diesel generators at Peach Bottom common to Unit 2 and Unit 3. Each is housed in a separate room of the Diesel Generator Building. The fifth room of the Diesel Generator Building, the Cardox room, houses the Cardox system carbon dioxide storage tank, refrigeration equipment, master selector valves and batteries that provide back up power to the Cardox control components. This room also contains pumps and fans unrelated to the Cardox system.

The original Cardox system was not classified as safety related or seismic. Yet, this system provides a trip signal to diesel generators upon Cardox actuation. This trip exists because each diesel generator engine draws combustion air from within its room. Consequently, in the event of a fire and carbon dioxide discharge into a diesel generator room, the diesel engine would draw in carbon dioxide. This could result in loss of the diesel due to suffocation of the engine, and reduction of the carbon dioxide concentration in the room to the point where the fire may not be extinguished. A diesel generator is therefore tripped by the Cardox system when the system actuates in its room. There presently are four combination fixed temperature and rate-of-rise heat detectors in each diesel room. Only one of the four heat detectors in the room needs to actuate to initiate a Cardox discharge and diesel generator trip. This is not in conformance with the design. The FSAR and other design documents and drawings specify that two of the four detectors need to actuate to initiate the system; however, it was recently discovered that the installation is such that any one detector can initiate the system. A diesel generator is not affected by Cardox actuation in another diesel generator room. A diesel generator trip signal resulting from Automatic Cardox actuation is not blocked when indications of a loss of offsite power are present, but is blocked by a loss of coolant accident (LOCA) signal.

The proposed modification will eliminate the possibility of a common mode seismic-induced actuation of the Cardox system and/or diesel generator trips by replacing the current Cardox system controls and heat detectors with seismically qualified, safety related components. This will also reduce the probability of a spurious Cardox actuation and/or diesel generator trip due to Cardox component failure. The diesel generator Cardox actuation trip will be retained and the automatic actuation of Cardox will still be blocked by a LOCA signal. In each diesel generator room the four heat detectors will be replaced with sixteen seismically qualified, safety related rate compensation heat detectors at eight locations, referred to as "zones." To activate a carbon dioxide discharge and trip the diesel generator, both detectors in any one zone must actuate. This minimizes the possibility of inadvertent carbon dioxide system actuation due to a detector failure, but does not inhibit quick detection because the detectors in a zone will be located in close proximity to each other. The revised layout ensures that a fast developing fire will be quickly detected. A fast developing, high heat output fire is the most likely type to occur in a diesel room because the prominent combustibles in the rooms are oil and diesel fuel.

The licensee proposes that the Technical Specifications be revised to reflect an increased number of detectors in each diesel generator room and the revised detection logic scheme. Currently, Limiting Condition of Operation (LCO) 3.14.B.3 requires that four heat detectors in each diesel generator room be operable, but permits one of the four detectors to be inoperable for no more than seven days without compensatory measures. Licensee proposes to change LCO 3.14.B.3 such that it requires that sixteen new detectors (two in each of eight zones) to be operable when the diesel generators are required to be operable, except that one detector or both detectors in one zone of the eight zones may be inoperable for no more than seven days without compensatory measures. Also, Licensee proposes that Table 3.14.C.1 be revised to include the new detector numbers, and that the Bases on page 240q be amended to clarify the minimum number of detectors required to be operable.

The proposed LCO for the new heat detectors is at least as restrictive as the current LCO. Currently, if one of the four heat detectors in a room is inoperable for more than seven days, compensatory measures are required. The licensee is proposing that compensatory measures be required if one detector or both detectors in one zone of the eight zones in a room is inoperable. With one pair in a room inoperable, the remaining seven pairs of detectors (fourteen detectors in total) provide at least as much fire detection capability as three of the four original heat detectors.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists (10 CFR 50.92(c)). A proposed amendment to an operating license for a facility involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1 - The proposed changes do not involve a significant increase in the probability of consequences of an accident previously evaluated.

The proposed changes will increase diesel generator availability by correcting diesel generator building Cardox System design deficiencies which created the possibility of unnecessary diesel generator trip signals and inadvertent Cardox actuations that could suffocate diesel engines. The availability of standby ac power (in the event of loss of offsite power) is critical for mitigating the consequences of an accident. Previous licensing accident analyses assumed that systems which could trip the diesel generators were classified as safety related; thus, the proposed upgrades to the Cardox System will assure that the plant configuration is as assumed in previous analyses. Because the diesel generators are intended only to mitigate the consequences of an accident and have no impact on the probability of occurrence of an accident, the probability of an accident is not increased by the proposed changes. The design deficiencies will be corrected while maintaining or enhancing the level of fire protection. The proposed upgrades replace non-safety related non-seismic components with safety related seismically qualified components functionally similar to the original components. The new components will be subject to Quality Assurance controls as specified for safety related components to maintain a high level of reliability. The intent of the proposed LCO for the new heat detectors is the same as the intent of the current LCO and is at least as conservative as the current LCO.

Standard 2 - The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes will increase the reliability of the Cardox System and consequently increase availability of the diesel generators, while satisfying applicable fire protection requirements. Modification 2390 does not affect any system other than the diesel generators and Cardox. Replacing the Cardox

System components with safety related seismically qualified components and increasing the number of detectors does not create any accident precursors. The new components perform the same function as the original components. The proposed LCO merely reflects the increased number of detectors and the two-out-of-sixteen logic without creating any new type of operating mode. Thus, the possibility of a new or different kind of accident will not be created.

tandard 3 - The proposed revisions do not involve a significant reduction in a margin of safety.

The proposed changes restore margins of safety to the margins determined from previous analyses by correcting the design deficiencies while maintaining or enhancing the level of fire protection without adversely affecting any systems important to safety. Modification 2390 corrects design deficiencies that clearly had a negative effect on safety.

The probability of an unnecessary diesel generator trip signal from the Cardox System or a spurious Cardox System discharge that could suffocate the diesel engine will be reduced by making the Cardox components safety related and seismically qualified and restoring the logic to a two detector scheme.

The staff has reviewed the license's no significant hazards consideration determination and agrees with the licensee's analysis.

Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: September 7, 1988

Description of amendment request: The proposed amendment would modify the Technical Specifications to correct deficiencies in the degraded voltage protection features. The deficiencies were identified as a result of revised voltage regulation studies. The studies were based in part on the consideration that, under certain offsite power emergency conditions, the voltage provided to the station's offsite power supply transformers could be lower than previously assumed. The study also modeled the plant's power distribution system to a greater level of detail.

The proposed changes are grouped into two categories. The Category A changes address the degraded grid protection relays, and involve increasing the time delay for the 4.16kV bus or the emergency power system to transfer to an alternate power supply and decreasing the voltage setpoint on the instantaneous undervoltage relays on the 4.16kV buses. Category B changes address the Emergency Core Cooling System (ECCS) loading sequence.

The Category A changes involve two independent offsite power sources which are referred to as the start-up sources. The 4160 volt (4.16kV) bus feeder breakers provide the interface between the two offsite power sources and the plant safety-related AC power distribution system. Each of the four 4.16kV buses in each unit can be powered by either of the two offsite power supplies. Each of the 4.16kV buses can also be powered from a safety related diesel generator.

Each startup source to each 4.16kV bus is equipped with an instantaneous undervoltage protective relay. Each relay is presently set to initiate at 90% of nominal voltage on the 4.16kV bus. The purpose of these relays is to ensure that adequate levels of voltage are provided to the motors and control components which are powered from the 480V motor control centers (MCCs) which are fed from the 4.16kV buses. The degraded grid protective relays initiate time delay relays which transfer the 4.16KV bus to an alternate supply source if the normal supply source does not recover to the instantaneous relay reset value (currently 93%) in a set period of time. The control circuit logic to the time delay relays distinguishes between an undervoltage condition without a safety injection signal and one concurrent with a safety injection signal. Without a safety injection signal, a time delay relay will initiate the transfer 60 seconds after initiation of the instantaneous relay if the voltage does not recover. With a safety injection signal, another time delay relay will initiate the transfer 6 seconds after initiation of the instantaneous relay if the voltage does not recover. The purpose of the 6 second delay is to minimize the time that safety-related equipment is exposed to the undervoltage condition, yet allow the voltage to recover from the dips caused by acceleration of the large safety-related motors. In either case, if the voltage of the normal supply has not recovered before the time delay relays initiate the transfer, the associated source breaker is tripped and the bus is loaded onto an alternate power supply. The alternate supply for any 4.16kV bus is, in order of preference, the remaining offsite power source, then the emergency diesel generator. The revised voltage regulation study identified that under the scenario of a safety injection signal on one unit while operating with only one of two offsite power sources (permitted for 7 days by Limiting Condition for Operation 3.9.B.1), the existing 6 seconds time delay setting is adequate. The existing 6 seconds would not allow sufficient acceleration time for the core spray pump motors. Therefore, even after a 6 second delay, the core spray pump motors, which are currently started simultaneously, will not be at rated speed (based on design acceleration versus voltage values) thereby not allowing voltage recovery on the 4.16kV buses, and all four 4.16kV bus feeder breakers will trip, thus loading each bus onto its associated diesel generator. This would represent a reduction in defense in depth since it is desirable, if offsite power is available, to supply these loads from the offsite power supply without reliance on the backup diesel generators. The licensee has identified two categories of changes to address this concern. The Category A changes deal with the offsite power source and include the following: (1) Revise Technical Specification Table 3.2.B on page 71a to designate the trip level setting for the instantaneous relays as "89% of rated voltage 27 0.30% of setting (3702 volts 27 11 volts)" instead of "90% (+/-2%) of rated voltage," and replace the "(ITE)" in the trip function column with "(27N)"; (2) Revise Table 3.2.B on page 71a to designate the trip level setting for the time delay relays as "9 second (+/-7%) time delay" instead of "6 second (+/-5%) time delay"; (3) Revises BASES section 3.2 on page 93a to reflect the two changes above.

The Category B changes deal with revising the scheme for the sequential loading of the residual heat removal (RHR) and the core spray (CS) pumps. The four CS pumps and the four RHR pumps of the Emergency Core Cooling System (ECCS) are powered from the 4.16kV buses. In the event of a LOCA with offsite power available, the RHR and CS pumps are loaded sequentially onto the 4.16kV buses to preclude severe voltage transients from the simultaneous starting of the pumps. The present loading sequence for the RHR and CS pumps in the event of a safety injection signal with offsite power available results in voltage dips on the 4.16kV and 480V buses which are unacceptable in consideration of the degraded grid

protective relay settings due to core spray pump motor acceleration time. Therefore, the licensee proposes a revised loading sequence for a safety injection signal with offsite power available as follows: (1) Revise Table 3.2.B on page 67 to designate the initiation setpoint for the A and C core spray pumps to be "13 sec. +/-7% of setting" and the initiation setpoint for the B and D core spray pumps to be "23 sec. +/-7% of setting"; (2) Revise Table 3.2.B on page 67 to designate the initiation setpoint for the A and B LPCI pumps to be "2 sec. +/-7% of setting" and the initiation setpoint for the C and D LPCI pumps to be "8 sec. +/-7% of setting"; (3) Revise Table 3.2.B on page 67 of the Unit 3 Technical Specifications only to delete the asterisk next to the ADS Bypass Timer and the footnote which reads "Effective when modification associated with this amendment is complete."

In addition to the proposed ECCS loading sequence, the licensee will further improve the voltage regulation of the 480V load centers during a motor starting transient by a combination of plant modifications which revise the load shedding or sequencing of the emergency service water pumps, the emergency cooling water pump, the RHR compartment coolers, the cooling towers and the diesel generator vent supply fans. The licensee plans to perform these changes pursuant to 10 CFR 50.59 since none involves an unreviewed safety question or a change to the Technical Specifications. The Appendix K (ECCS Evaluation Models) analysis was used to determine bounding allowable starting times for the RHR and CS pumps. For change Request (1), the licensee concluded that the proposed increases in the core spray timer settings are within the Appendix K analysis. Success of the core spray system requires two factors: (1) pump ready for rated flow and (2) injection valve open to permit full flow. There are two conditions required to support worst case valve opening; reactor pressure is at the low end of its low pressure permissive (400-500 psig) and power is available to the valve operator. Under the limiting scenario, the low pressure permissive occurs 47 seconds following occurrence of the LOCA. Power to the injection valves is not interrupted in this scenario and the valve stroke time is 12 seconds. The earliest that the injection valve can be opened, therefore, is 59 seconds, and the pumps must be ready for full flow prior to this time. The series of events contributing to the establishment of the pumps ready for rated flow are the sensor times for detection of the LOCA, the time for power to be available at the emergency bus, the time for power to be available to the pump motor and pump motor acceleration time. As stated previously, an assumption of the current Appendix K analysis of record is that the time available to start and accelerate the CS pumps from the offsite sources is 59 seconds. Taking into account the above equipment operational time requirements, the CS timer setting must be less than 47 seconds. Thus, the proposed 13 and 23 second timer settings are within the analyzed condition.

For Change Request (2), the licensee has similarly concluded that the proposed increases in RHR pump timer settings are in accordance with the Appendix K analysis. Success of the low pressure coolant injection (LPCI) mode of the RHR system requires three factors: (1) pump ready for rated flow, (2) injection valve open to permit full flow and (3) full closure of the recirculation discharge valve. Under the limiting scenario, 57 seconds are available for the RHR pumps to start and accelerate to rated speed. The 57 seconds are derived from the time to reach the low pressure permissive to close the reactor recirculation discharge valve plus the full stroke closure time of the recirculation discharge valve. The series of events for the RHR pumps ready for rated flow are similar to the series of events for the CS pumps. Taking into account the sensor and acceleration delays, the RHR timer setting must be less than 50.9 seconds. Thus, the proposed 2 and 8 second timer settings are within the analyzed condition. Neither Change Request involves additional loading onto the DC system. All replacement and additional relays resulting from these changes will be located in existing safety-related panels. The control relays provided will equal or exceed the ratings of the existing relays and meet the applicable design requirements for environmental and seismic qualification.

Change Request (3) is proposed to the Unit 3 Technical Specifications only to delete a footnote which is no longer required since the modification associated with the ADS bypass timer (Modification 633) was completed for Unit 3 on February 24, 1986. Removing the footnote will eliminate the need to check the status of the modification to determine the applicability of the specification. The licensee proposes this administrative change to enhance safety by reducing the effort required to interpret the specification.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below.

Standard 1 - The proposed Category A changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Category A changes are proposed to improve the protection provided by the undervoltage protective relays. Although the proposed setpoint is lower than the existing setpoint, protection to the 480V control components powered from the MCCs is improved due to improved operational tolerances of the proposed replacement relays. Increasing the setting on the time delay relay from 6 seconds to 9 seconds will ensure that the 4.16kV buses will not be spuriously transferred to the diesel generators in the event of a design basis accident with only one offsite power source available. These proposed changes do not affect the probability or consequences of any accidents previously evaluated, but ensure that the 4.16kV buses will not be spuriously transferred to the diesel generators thereby ensuring the validity of the existing accident analysis; specifically, a loss of coolant accident with offsite power available.

Standard 2 - The proposed Category A changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the relay settings do not involve a redistribution of loads on safety-related buses or affect the electrical separation or redundancy of any safety-related trains or components. The proposed changes improve the undervoltage protective scheme and allow the 4.16kV buses to sustain a normal motor acceleration transient without a spurious transfer to an alternate power source. The Category A changes do not alter the intent of the relays, and do not create the possibility of a new or different kind of accident from any previously evaluated.

Standard 3 - The proposed Category A changes do not result in a significant reduction in a margin of safety.

The Category A changes are proposed to enhance safety. Although the proposed 89% setting does not assure 90% voltage at the MCC contractors as suggested by

manufacturers' design tolerances (2710%), field tests have been performed which indicate that the actual pickup voltage is less than 75% of nominal voltage. Increasing the time delay settings allows pump motors to accelerate without an unnecessary transfer to an alternate power supply. The changes do not involve a significant reduction in any margin of safety.

Standard 1 - The proposed Category B changes do not involve a significant increase in the probability or consequences of any accident previously evaluated.

The Category B changes are proposed to ensure the validity of the existing accident analyses; specifically, a design basis LOCA with offsite power available. Revising the timer settings for the RHR and CS pumps will improve the voltage at the 480V levels during a motor acceleration transient and also prevents spurious transfer of the 4.16kV buses to the diesel generators in the event of a safety injection while operating with only one offsite power source available. Therefore, the proposed changes do not increase the probability or consequences of an accident previously evaluated.

Standard 2 - The proposed Category B changes do not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes to the CS and RHR systems only involve changes to load sequencing when offsite power is available. The proposed changes do not involve the CS or RHR system piping configurations, pumps, valves or system redundancies. The replacement timers required for the proposed load sequencing equal or exceed the ratings for the existing timers, and do not affect the environmental or seismic qualification of the panels in which they will be installed. Failure of any timer can only affect one redundant train of equipment. Therefore, the possibility of a new or different kind of accident is not created.

Standard 3 - The proposed Category B changes do not result in a significant reduction in a margin of safety.

The proposed changes do not adversely affect the safety margin assumed in the 10 CFR Appendix K analysis for ensuring fuel integrity for the entire spectrum of postulated LOCAs. The limiting Appendix K scenario for core spray requires the CS pumps to be at rated flow 59 seconds after a LOCA to ensure the existing margin of safety. Under the proposed changes, the latest that the CS pumps will achieve rated flow is 35 seconds (3 seconds for detection of the LOCA plus 23 seconds for the longer of the CS timer delays plus a maximum of 9 seconds for motor acceleration). The limiting Appendix K scenario for the low pressure coolant injection mode of residual heat removal requires the RHR pumps to be at rated flow 57 seconds after a LOCA to ensure the existing margin of safety. Under the proposed changes, the latest that the RHR pumps will achieve rated flow is 14.1 seconds (3 seconds for detection of the LOCA plus 8 seconds for the longer of the RHR timer delays plus 3.1 seconds for motor acceleration). Therefore, although the Category B changes delay the availability of the CS and RHR pumps at rated flow, they do not result in a significant reduction in the margin of safety for core coolant delivery.

The staff has reviewed the licensees' no significant hazards consideration for Category A, items 1 and 2 and Category B, items 1 and 2 and agrees with the licensees' analysis. Accordingly, the Commission has proposed to determine that the above changes do not involve a significant hazards consideration.

The Category B, item 3, change involving deletion of a now obsolete footnote is proposed as an administrative change to improve the use of the Technical Specifications. The Commission has provided guidance for the application of the criteria for no significant hazards consideration determination by providing examples of amendments that are considered not likely to involve significant hazards considerations [51 FR 7751]. These examples include: Example (i) "A purely administrative change to technical specifications: for example, a change to achieve consistency throughout the technical specification, corrections of an error, or a change in nomenclature." The proposed change, to delete a footnote which refers to a now completed modification is an example of such an administrative change since, now that the modification has been completed, the specification is in effect and the footnote is extraneous. Since this proposed change is encompassed by an example for which no significant hazard exists, the staff has made a proposed determination that it involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Philadelphia Electric Company, Public Service Electric and Gas Company, Delmarva Power and Light Company, and Atlantic City Electric Company, Dockets Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Units Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 11, 1982, August 24, 1983, November 1, 1985, September 30, 1986, September 8, 1987 and September 7, 1988

Description of amendment request: The amendment would change the Technical Specifications to incorporate restrictions on working hours and strict administrative controls based on seven-day work periods for all site staff who perform safety-related functions and also based on periods of up to one calendar year for shift operators (licensed Senior Operators, licensed operators and non-licensed operators). The proposed Amendment is provided to ensure control over excessive periods of continuous work or chronic overtime. Provisions are included for documentation of authorized exceedance of working hour restrictions to ensure that trends are identified and excessive working hours are controlled and limited. The controls are designed to minimize the probability of personnel error and improve personnel attentiveness to safety-related activities.

The proposed amendment would add Section 6.20 to the Technical Specifications entitled, "Site Staff Working Hour Restrictions" (adding pages 270, 271 and 272 as included in the proposed amendment). The first paragraph of this section (6.20.1) would establish the requirements for the administrative procedures to limit the work hours of staff who perform safety-related functions.

The subsequent paragraph (6.20.2) would establish the objective of the working hour restrictions by specifying those restrictions applicable to all site staff who perform safety-related functions and additional restrictions for shift operators.

The subsequent paragraph (6.20.3) would provide the approval authority for exceedance of work hour restrictions to ensure that the primary authority for approval of work hour exceedance is with the employing officer. Also included are provisions for establishing procedures for documentation of exceedance. Procedures will be provided such that overtime is monitored on a cumulative basis.

A BASES section (p. 272) is also provided which reflects the wording in the Standard Technical Specification (NUREG-0123) and NRC guidance. Additionally, "alternate" has been defined to ensure that it refers to the appropriate level of management.

Basis for proposed no significant hazards consideration determination: The Commission has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92. A proposed amendment to an operating license for a facility involves no significant hazards considerations if operation of the facility in accordance with a proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; (2) Create the possibility of a new or different kind of accident from

any accident previously evaluated; or (3) Involve a significant reduction in a margin of safety.

The licensee has provided a discussion of the proposed changes as they relate to these standards; the discussion is presented below:

Standard 1 - The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated since the proposed working hour restrictions reduce the possibility of work-induced fatigue and consequently improve attentiveness to safety-related activities in the interest of reducing the probability or consequences of an accident as evaluated in Chapter 14 of the PBAPS Updated Final Safety Analysis Report. These changes also reflect the organizational changes recently approved by the NRC (License Amendment Nos. 132 and 135) which will ensure that the primary authority for approval of working hour exceedance is with the appropriate level of site management. Thus, management control and awareness of the overtime work status will be elevated thereby ensuring that control of working hours for personnel involved with safety-related activities is maintained.

Standard 2 - The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they increase control over working hours and the attendant reduction in personnel fatigue. These changes thereby enhance the capability of plant personnel to maintain the status of systems and operational parameters within the envelope of acceptable conditions required by established procedures and regulations.

Standard 3 - The changes do not involve a significant reduction in the margin of safety since the addition of work hour restrictions reduces the likelihood of personnel error in activities related to nuclear safety. To the contrary, the margin of safety in mitigating the consequences of an accident as evaluated in Chapter 14 of the PBAPS Updated Final Safety Analysis Report will be increased as a result of the overtime work restrictions.

The staff has reviewed the licensees' no significant hazards consideration determination and agrees with the licensees' analysis.

In addition to the licensee's analysis provided above, the staff notes that the Commission has provided guidance concerning the application of the standards for determining whether license amendments involve no significant hazards considerations by providing certain examples (51 FR 7751). One of the examples (ii) of actions involving no significant hazards consideration is a change that constitutes an additional limitation, restriction, or control not presently included in the Technical Specifications. The proposed changes, specifically the addition of restrictions on working hours, requirements for administrative procedures and the approval authority for controlling working hours are additional limitations not presently included in the Technical Specifications and are therefore within the scope of the example.

Accordingly, on the basis of the staff's review of the licensee's determination and on the basis that the proposed change is encompassed by an example for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Education Building, Commonwealth and Walnut Streets, Harrisburg, Pennsylvania 17126

Attorney for Licensee: Troy B. Conner, Jr., 1747 Pennsylvania Avenue, NW., Washington, DC 20006

NRC Project Director: Walter R. Butler

Portland General Electric Company et al., Docket No. 50-344, Trojan Nuclear Plant, Columbia County, Oregon

Date of amendment request: August 12, 1988

Description of amendment request: The proposed amendment would revise the surveillance requirements of Table 3.4.6-1 associated with Trojan Technical Specifications (TS) Section 3/4.4.6.2 regarding leakage from reactor coolant system pressure isolation valves, to require that when leakage tests are performed using a test differential pressure lower than the function maximum differential pressure, observed leakage rates shall be adjusted to function maximum differential pressure values, using the square root of the ratio of the function maximum differential pressure and the actual test differential pressure.

Basis for proposed no significant hazards consideration determination: 10 CFR 50.92 states that a proposed amendment will not involve a significant hazards consideration if the proposed amendment does not: (i) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (ii) Create the possibility of a new or different kind of accident from any accident previously evaluated; or (iii) Involve a significant reduction in a margin of safety.

The licensee has evaluated the proposed amendment against the standards of 10 CFR 50.92, and has determined the following:

The proposed change is a more restrictive limitation not presently included in the Trojan Technical Specifications. Applying more restrictive test criteria to the Reactor Coolant System (RCS) pressure isolation valves provides greater assurance of valve integrity, thereby reducing the probability and the consequences of an accident.

The accident of concern is referred to as an intersystem Loss-of-Coolant Accident (LOCA) which involves excessive leakage from a high pressure system (the RCS) to a lower pressure system [the Emergency Core Cooling System (ECCS)]. To adequately monitor the integrity of the high/low pressure interface (i.e., two in-series check valves), the Technical Specifications provide surveillance requirements and associated leak-rate limits on these check valves. The proposed change requires that leakage data acquired at differential pressures lower than the function maximum value be adjusted upward to correspond to the function maximum differential pressure values. The proposed revision involves no physical alterations of Plant configurations or changes to setpoints or operating parameters and, therefore, does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed change will improve the margin of safety by requiring that observed leakage rates are conservatively adjusted to the higher function maximum differential pressure values when testing at lower differential pressures.

The staff has reviewed the licensee's no significant hazards analysis and concurs with the licensee's conclusions. As such, the staff proposes to determine that the requested change does not involve a significant hazards consideration.

Local Public Document Room location: Portland State University Library, 731 S.W. Harrison Street, Portland, Oregon 97207.

Attorney for licensee: Leonard A. Girard, Esq., Portland General Electric Company, 121 S.W. Salmon Street, Portland, Oregon 97204

NRC Project Director: George W. Knighton

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego, New York

Date of amendment request: August 24, 1988

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) to reflect a dual-time-delay degraded voltage protection system that will be installed during the Reload 8/Cycle 9 refueling outage. This modification would provide a larger actuation time delay under normal operating conditions.

Although the existing degraded voltage protection system was designed to withstand short term voltage drops due to expected operating evolutions (such as the starting of a larger motor), the design of the system did not

consider the significant voltage transient associated with bus transfers. As a result, actuations of the protection system have occured during normal startups when plant electrical loads are transferred from the off-site power source to the main generator source.

The proposed modification would increase the time delay for emergency diesel generator (EDG) actuation from the existing 9 seconds to 45 seconds under normal operating conditions. Under loss-of-coolant accident (LOCA) conditions, the LOCA signal will independently start the EDGs.

As a result of the proposed modification, TS Section 3.2 (Bases), and Tables 3.2-2 and 4.2-2 would be revised.

Basis for proposed no significant hazards consideration determination: In accordance with the Commission's Regulations in 10 CFR 50.92, the Commission has made a determination that the proposed amendment involves no significant hazards considerations. To make this determination the staff must establish that operation in accordance with the proposed amendment would not: (1) involve a significant increase in the probability or consequences of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from any accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

The Final Safety Analysis Report (FSAR) analysis for the design basis loss-of-coolant-accident (LOCA) considers a simultaneous loss of off-site power. The proposed changes do not affect the circuitry which starts the EDGs under these conditions. The ability of the EDGs to supply power to the emergency busses in the time assumed in the DBA LOCA accident analysis remains unchanged. A variation of this event is a LOCA with a simultaneous degraded off-site voltage condition. This specific sequence of events was not analyzed in the FSAR, but was considered subsequently in an NRC safety evaluation report. The second level of undervoltage protection system, installed during the Reload 7/Cycle 8 refueling outage, connects the EDGs to the 4160 VAC emergency buses within the same time that is assumed in the DBA case. The proposed changes to the Technical Specifications do not change the response of the plant under these conditions. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not involve a significant increase in the probability or consequences of an accident previously evaluated.

Failure of the modified degraded voltage system to operate would place the plant in the same configuration that existed before the system was installed. FitzPatrick was previously analyzed in that configuration and therefore, the proposed modifications would not initiate or contribute to a new or different type of accident. Inadvertent actuation of the modified degraded voltage system would be identical to two actuations of the degraded voltage protection system experienced during operating Cycle 8. The result is similar to, but less severe than the loss of off-site power transient previously analyzed. It would be less severe since the non-safety related buses would still be energized from the off-site power sources and would be available to mitigate the transient. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not create the possibility of a new or different kind of accident from any accident previously evaluated.

In addition to assuring that the undervoltage protection system satisfies its design function, the proposed changes reduce the number of challenges to safety related equipment (the EDGs) and reduce the probability of a transient initiator. The proposed changes thus result in an increase in the margin of safety for the FitzPatrick plant. Therefore, operation of FitzPatrick in accordance with the proposed amendment will not involve a significant reduction in a margin of safety.

Since the application for amendment involves proposed changes that are encompassed by the criteria for which no significant hazards consideration exists, the staff has made a proposed determination that the application involves no significant hazards consideration.

Local Public Document Room location: State University of New York, Penfield Library, Reference and Documents Department, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra, Director

Tennessee Valley Authority, Docket No. 50-260 and Browns Ferry Nuclear Plant, Unit, 2, Limestone County, Alabama

Date of amendment requests: August 12, 1988 (TS 249)

Description of amendment request: The proposed amendment would modify the technical specification (TS) of the Browns Ferry Nuclear (BFN) Plant, Unit 2 by revising the limiting conditions for operation and the surveillance requirements for equipment required for 10 CFR Part 50 Appendix R safe shutdown. The existing Unit 2 TS for the main steam relief valves, residual heat removal service water pumps, and emergency equipment cooling water pumps do not provide sufficient equipment operability for all postulated Appendix R events. Unit 2 safe shutdown capability also relies upon portions of the Unit 1 and 3 auxiliary power systems, including the Unit 3 diesel generators, which are not directly included in the present Unit 2 TS. Also, the reactor water level and reactor vessel pressure instrumentation at the backup control panel as identified in the plant Appendix R evaluation do not currently have any technical specification operability requirements. The proposed TS would correct these deficiencies and define the actions and compensatory measures to be taken to ensure the safe shutdown of the plant in the event of a fire.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards considerations exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards considerations if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated, (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed amendment does not alter the function or the testing of any equipment or systems previously analyzed in the BFN Final Safety Analysis Report, but provides additional equipment operability requirements to support the safe shutdown of the plant for a fire event.

2. The proposed amendment does not create the possibility of a new or different kind of accident from an accident previously evaluated. This proposed change is still within the bounds of the design of the systems. Equipment previously covered by Units 1 and 3 technical specifications are incorporated into the Unit 2 technical

specifications to ensure availability to support Unit 2 safe shutdown during a fire for periods when Units 1 and 3 may be shutdown.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed change ensures a safe shutdown capability for a fire at any location in the plant. It does not alter the safety function of the involved equipment.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for this amendment involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment requests: September 29, 1988 (TS 255)

Description of amendment requests: The proposed amendment would change the Browns Ferry Nuclear Plant (BFN) Technical Specifications (TS) for Units 1, 2 and 3 to delete all references to seismic restraints and supports from TS Sections 3.6.H and 4.6.H and to revise the bases for these two sections as appropriate.

Basis for proposed no significant hazards consideration determination: The Commission has provided Standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has performed and provided the following analysis:

NRC has provided standards for determining whether a significant hazards consideration exists as stated in 10 CFR 50.92(c). A proposed amendment to an operating license involves no significant hazards consideration if operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequence of an accident previously evaluated, or (2) create the possibility of a new or different kind of accident from an accident previously evaluated, or (3) involve a significant reduction in a margin of safety.

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

Deleting the seismic restraints and supports from these sections of the technical specifications does not invalidate nor change the calculations or design basis in which BFN was built and licensed. The current BFN Technical Specification 3.6.H does not provide any surveillance requirements in order to declare seismic restraints and supports operable. If a restraint or support is found to be damaged or there is a question about its ability to perform its function, the operations department will be informed and the operability of the affected system will be determined. If it is determined that the restraint or support will render a technical specification system inoperable, the appropriate system limiting conditions for operation (LCO) will apply.

2. This change does not create the possibility of a new or different kind of accident from an accident previously evaluated.

This proposed changes does not add, eliminate, or modify any equipment or operational conditions. These changes still support and are bounded by the design calculations and the Final Safety Analysis Report by which BFN is currently licensed.

3. This change does not involve a significant reduction in a margin of safety.

Although the proposed changes remove the explicit technical specification requirements for seismic restraints and supports, the overall plant margin of safety will be maintained in that restraints and supports will be considered for system operability. As stated above, any restraint or support found to be damaged or otherwise incapable of performing its intended function will be evaluated for operability. If a technical specification system or component is found to be adversely affected, thus rendering it inoperable, the appropriate LCO will be followed until the restraint or support is repaired or an engineering evaluation establishes operability without the need for the damaged support or restraint. If the restraint or support cannot be repaired or operability established via an engineering evaluation, the appropriate action identified in the technical specification LCO for the associated system will be followed.

Deletion of the restraints and supports from the technical specification also eliminates the requirements to repair them within 72 hours as currently stated. This does not reduce the margin of safety since an evaluation will be performed to determine operability of the system or the system LCO and action statements will be followed. The times allowed by the Technical Specification for a system to be inoperable have been evaluated by NRC, vendors, and the utility and found to be acceptable as issued and utilized throughout the industry. The definition of operability would require the operator to evaluate and determine system operability if a problem arose with a restraint or support since it would be considered a subsystem to the Technical Specification related piece of equipment.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of amendment request: September 21, 1988 (TS 88-18)

Description of amendment request: The Tennessee Valley Authority (TVA) proposes to modify the Sequoyah Nuclear Plant Unit 2 Technical Specifications (TS). The proposed change is to revise surveillance requirement (SR) 4.6.5.1.b.2 to allow a one-time extension to the next refueling outage for weighing of ice. TVA proposes adding a footnote to the current requirement that SR 4.6.5.1.b.2 be performed at least once per 12 months. The footnote states that the SR will be performed no later than the Unit 2 cycle 3 refueling outage or January 22, 1989, whichever comes first.

Basis for proposed no significant hazards consideration determination: TVA stated the following in its submittal to support its proposed change to the Unit 2 TS:

TVA is requesting an extension of SR 4.6.5.1.b.2 to allow weighing of ice in the upcoming refueling outage. The ice condenser surveillance is required to be performed by December 4, 1988. This surveillance can only be performed during shutdown; therefore, to avoid an unnecessary shutdown of the plant, this surveillance needs to be extended to the upcoming refueling outage. Currently, the refueling outage is scheduled to begin January 22, 1989. Therefore, this extension is short compared with the overall time of the surveillance interval.

The Commission has provided standards for determining whether a significant hazards determination exists as stated in 10 CFR 50.92(c). 10 CFR 50.91 requires that at the time a licensee requests an amendment, it must provide to the Commission its analyses, using the standards in Section 50.92, on the issue of no significant hazards consideration. Therefore, in accordance with 10 CFR 50.91 and 10 CFR 50.92, the licensee has provided the following analysis:

TVA has evaluated the proposed technical specification change and has determined that it does not represent a significant hazards consideration based on criteria established in

10 CFR 50.92(c). Operation of SQN in accordance with the proposed amendment will not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The ice condenser system is provided to absorb thermal energy release following a loss-of-coolant-accident (LOCA) or high-energy line break (HELB) and to limit the peak pressure inside containment. The ice condenser analysis shows that, with a minimum of 1,080 pounds of ice per basket, the ice condenser will perform its function. Based on surveillance history of the ice baskets, the calculations of the sublimation rates, and the relatively short extension time, this request will not result in a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed. The surveillance extension will not result in a change to the plant configuration or operation. Therefore, this change will not create the possibility of a new or different kind of accident from any previously analyzed.

(3) Involve a significant reduction in a margin of safety. The Final Safety Analysis Report analysis shows that, with the minimum amount of ice present in the ice condenser, the system will perform its function during a LOCA or HELB. Based on the improved surveillance performance of the system, the sublimation calculation, and the short time period of the extension, this change does not involve a significant reduction in the margin of safety.

The staff has reviewed the licensee's no significant hazards consideration determination and agrees with the licensee's analysis. Therefore, the staff proposes to determine that the application for amendments involves no significant hazards considerations.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1001 Broad Street, Chattanooga, Tennessee 37402.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

PREVIOUSLY PUBLISHED NOTICES OF CONSIDERATION OF ISSUANCE OF AMENDMENTS TO OPERATING LICENSES AND PROPOSED NO SIGNIFICANT HAZARDS CONSIDERATION DETERMINATION AND OPPORTUNITY FOR HEARING

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Public Service Company of New Hampshire, Docket No. 50-443, Seabrook Station, Unit 1 Rockingham County, New Hampshire

Date of application for amendment: July 8, 1988 as supplemented on August 8, 1988

Brief description of amendment: This amendment revises the Technical Specifications to change the setpoints for the pressurizer pressure, pressurizer water level and steam generator water level channels as a result of replacing the Veritrak/Tobar transmitters with Rosemount transmitters.

Date of issuance: September 27, 1988

Effective date: September 27, 1988

Amendment No.: 1

Facility Operating License No.: NPF-56

Date of individual notice in **Federal Register:** August 26, 1988 (53 FR 32805)

NOTICE OF ISSUANCE OF AMENDMENT TO FACILITY OPERATING LICENSE

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with these actions was published in the **Federal Register** as indicated. No request for a hearing or petition for leave to intervene was filed following this notice.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendments, (2) the amendments, and (3) the Commission's related letters, Safety Evaluations and/or Environmental Assessments as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC, and at the local public document rooms for the particular facilities involved. A copy of items (2) and (3) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: December 1, 1986; October 5, 1987; and February 17, 1988

Brief description of amendments: The amendments modified paragraphs 2.C.(4) and 2.D of Facility Operating Licenses DPR-53 and DPR-69, respectively, to require compliance with the amended Physical Security Plan. This Plan was amended to conform to the requirements of 10 CFR 73.55. Consistent with the provisions of 10 CFR 73.55, search requirements must be implemented within 60 days and miscellaneous amendments within 180 days from the effective date of these amendments.

Date of issuance: September 23, 1988

Effective date: September 23, 1988

Amendment Nos.: 132 and 113

Facility Operating License Nos. DPR-53 and DPR-69. These amendments revised the licenses.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32289). The Commission's related evaluation of these amendments is contained in a letter to Baltimore Gas and Electric Company and a Safeguards Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: August 6, 1988

Brief Description of amendment: This amendment modifies the Technical Specifications in Section 6.5.A.2.

Date of issuance: September 26, 1988

Effective date: September 26, 1988

Amendment No.: 122

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 24, 1988 (53 FR 32289). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Dates of application for amendments: March 13, 1987, as supplemented January 6, 1988, March 10, 1988, April 6, 1988, and July 12, 1988

Description of amendments: The amendments change the Technical Specifications (TS) to revised Section 4.4.1.2 regarding jet pump surveillance requirements for demonstrating jet pump operability. They also restore Bases information for TS 3/4.4.2, "Safety Relief Valves," and TS 3/4.4.3.1, "Reactor Coolant Systems Leakage, Leakage Detection Systems," that was inadvertently deleted in an earlier amendment.

Date of issuance: October 6, 1988

Effective date: October 6, 1988

Amendment Nos.: 119, 154

Facility Operating License Nos. DPR-71 and DPR-62. Amendments revise the Technical Specifications.

Date of initial notice in Federal Register: July 13, 1988 (53 FR 26519). The April 6, 1988 and July 12, 1988 letters provided clarifying informaion that did not change the initial determination of no significant hazards consideration as previously published in the Federal Register. The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Commonwealth Edison Company Docket Nos. STN 50-454 and STN 50-455, Byron Station Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. STN 50-456 and STN 457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois

Date of application for amendments: January 5, 1988

Brief description of amendments: These amendments remove two tables from the Technical Specifications which list reactor trip system instrumentation response times and engineered safety features response times. These two tables are being placed in the Byron/Braidwood Final Safety Analysis Report.

Date of issuance: September 27, 1988

Effective Date: September 27, 1988

Amendment Nos.: 23 for Byron, 12 for Braidwood

Facility Operating License Nos. NPF-37, NPF-66, NPF-72, and NPF-77: Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: August 24, 1988 (53 FR 32290). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 27, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: For Bryon Station the Rockford Public Library, 215 N. Wyman Street, Rockford, Illinois 61101; for Braidwood Station the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481.

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: December 15, 1987, as supplemented April 15, 1988.

Brief description of amendments: The amendments modified the Technical Specifications related to snubbers.

Date of issuance: September 26, 1988

Effective date: September 26, 1988

Amendment Nos.: 52 and 45

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 27, 1988 (53 FR 28285). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of application for amendments: July 11, 1988

Brief description of amendments: The amendments modified Technical Specification Table 3.3-10 "Accident Monitoring Instrumentation" by revising the total number of channels for the auxiliary feedwater flow rate, power operated relief valve (PORV) position indicator, and PORV block valve position indicator.

Date of issuance: October 6, 1988

Effective date: October 6, 1988

Amendment Nos.: 54 and 47

Facility Operating License Nos. NPF-35 and NPF-52. Amendments revised the Technical Specifications.

Date of initial notice in Federal Register: July 27, 1988 (53 FR 28286). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 6, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Duquesne Light Company, Docket No. 50-412, Beaver Valley Power Station, Unit No. 2, Shippingport, Pennsylvania

Date of application for amendment: June 22, 1988

Brief description of amendment: The amendment revises the allowable pressurizer and main steam safety valve setpoint tolerance from 27 1% to + 1%, - 3%.

Date of issuance: September 23, 1988

Effective date: September 23, 1988

Amendment No.: 5

Facility Operating License No. NPF-73. Amendment revised the Technical Specifications.

Date of initial notice in Federal Register: August 10, 1988 (53 FR 30130). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Duquesne Light Company, Docket Nos. 50-334 and 50-412, Beaver Valley Power Station, Unit Nos. 1 and 2, Shippingport, Pennsylvania

Date of application for amendments: June 22, 1988

Brief description of amendments: The amendments clarify the surveillance frequency of the safety injection input to the reactor trip system, delete a backup initiating signal for the auxiliary feedwater system and remove the requirement to test the RHR pumps on recirculation flow.

Date of issuance: September 23, 1988

Effective date: September 23, 1988

Amendment Nos.: 130 for Unit 1, 6 for Unit 2

Facility Operating License Nos. DPR-66 and NPF-73. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30131). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Florida Power Corporation, et al., Docket No. 50-302, Crystal River Unit No. 3 Nuclear Generating Plant, Citrus County, Florida

Date of application for amendment: August 14, 1986, as supplemented October 6, 1986 and revised August 2, 1988 (partial).

Brief description of amendment: This amendment extended the surveillance interval for the reactor vessel internals vent valves from once per 18 months to once per 24 months. Amendments 93 and 94, issued October 21, 1986 and November 7, 1986, respectively, responded to other facets of the licensee's original request.

Date of issuance: September 26, 1988

Effective date: September 26, 1988

Amendment No.: 108

Facility Operating License No. DPR-72. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 24, 1988 (53 FR 32293). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room Location: Crystal River Public Library, 668 N.W. First Avenue, Crystal River, Florida 32629

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-424, Vogtle Electric Generating Plant, Unit 1, Burke County, Georgia

Date of application for amendment: May 19, 1988 as supplemented August 12 and October 3, 1988

Brief description of amendment: The amendment modified the Technical Specifications to allow a slightly positive moderator temperature coefficient and revised shutdown margin requirements.

Date of issuance: October 4, 1988

Effective date: October 4, 1988

Amendment No.: 11

Facility Operating License No. NPF-68: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 29, 1988 (53 FR 24509). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 4, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-321, Edwin I. Hatch Nuclear Plant, Unit 1, Appling County, Georgia

Date of application for amendment: July 11, 1988

Brief description of amendment: The amendment modified the Technical Specifications to provide for a modified secondary containment boundary during periods of plant shutdown, provided certain conditions are met, and to make several editorial corrections.

Date of issuance: September 29, 1988

Effective date: September 29, 1988

Amendment No.: 158

Facility Operating License No. DPR-57. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 10, 1988 (53 FR 30133). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 29, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Iowa Electric Light and Power Company, Docket No. 50-331, Duane Arnold Energy, Center, Linn County, Iowa

Date of application for amendment: August 31, 1987

Brief description of amendment: The amendment deleted requirements for emergency diesel generator operability, relative to operability of the Standby Gas Treatment and Standby Filters Unit Systems. It also added a requirement for availability of systems during core alterations.

Date of issuance: September 30, 1988

Effective date: September 30, 1988

Amendment No.: 153

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 1, 1988 (53 FR 20042). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Cedar Rapids Public Library, 500 First Street, S.E., Cedar Rapids, Iowa 52401.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: May 19, 1988

Brief description of amendment: The amendment revises Technical Specification Section 4.6.1.3.a "Containment Air Locks" to allow the use of alternate methods for the leak rate testing of the containment air locks.

Date of issuance: September 23, 1988

Effective date: September 23, 1988

Amendment No.: 23

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26529). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northeast Nuclear Energy Company, et al., Docket No. 50-336, Millstone Nuclear Power Station, Unit No. 2, New London County, Connecticut

Date of application for amendment: June 14, 1988

Brief description of amendment: The amendment revises Technical Specification (TS) 4.8.1.1.2b, "A.C. Sources," for Millstone Unit 2. The revised TS changes the industry standard for acceptability of emergency diesel generator (EDG) fuel oil, referenced in the TS, from ASTM D975-74 to ASTM D975-78.

Date of issuance: September 26, 1988

Effective date: September 26, 1988

Amendment No.: 131

Facility Operating License No. DPR-65. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26528). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 26, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Waterford Public Library, 49 Rope Ferry Road, Waterford, Connecticut 06385.

Northern States Power Company, Docket No. 50-263, Monticello Nuclear Generating Plant, Wright County, Minnesota

Date of application for amendment: March 1, 1988

Brief description of amendment: This amendment involves a further revision of Section 3.4. and 4.4 of the plant Technical Specifications to that implemented by Amendment No. 56 to Facility Operating License No. DPR-22, and the exemption granted from the requirements of 10 CFR 50.62(c)(4) issued on December 11, 1987. The revision reflects a Boron-10 enrichment of 55 atom percent in the sodium pentaborate solution used for the Standby Liquid Control System (SLCS) at the Monticello Nuclear Generating Plant, which will enable the maintenance of a solution concentration as low as 10.7% (as opposed to the minimum concentration of 13.7% required in 10 CFR 50.62(c)(4), the ATWS Rule. This revision also deletes the requirement for a mid-cycle surveillance of the sodium pentaborate solution due to the availability and planned use of pre-mixed and vendor-certified solutions, which will preclude the need for the licensee to mix solution components (boric acid borax) on site thereby eliminating the need to continue to require a mid-cycle surveillance. However, this revision does not alter the original technical bases specified for the SLCS and implemented by License Amendment No. 56, nor alter the basis upon which the exemption to 10 CFR 50.62(c)(4) was granted.

Date of issuance: September 23, 1988

Effective date: September 23, 1988

Amendment No.: 57

Facility Operating License No. DPR-22. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 18, 1988 (53 FR 17791). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No.

Local Public Document Room location: Minneapolis Public Library, Technology and Science Department, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of application for amendments: August 5, 1986

Brief description of amendments: Changed the Technical Specifications to correct errors, achieve consistency, change nomenclature, and delete dated requirements which have previously been completed.

Date of issuance: August 30, 1988

Effective date: August 30, 1988

Amendment Nos.: 82 and 50

Facility Operating License Nos. NPF-14 and NPF-22. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 20, 1987 (52 FR 18983). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated August 30, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Public Service Electric & Gas Company, Docket No. 50-354, Hope Creek Generating Station, Salem County, New Jersey

Date of application for amendment: April 28, 1988

Brief description of amendment: This amendment revised the Applicability of Limiting Conditions for Operation and the Applicability of Surveillance Requirements as specified by Technical Specifications 3.04, 4.03 and 4.04.

Date of issuance: September 28, 1988

Effective date: September 28, 1988

Amendment No. 19

Facility Operating License No. NPF-57. This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 15, 1988 (53 FR 22406). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070

Rochester Gas & Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Plant Wayne County, New York

Date of application for amendment: September 24, 1987 as supplemented on May 3, 1988.

Brief description of amendment: The amendment revised the Technical Specifications to incorporate the requirements for the Reactor Vessel Level Indication System.

Date of issuance: September 23, 1988

Effective date: September 23, 1988

Amendment No.: 30

Facility Operating License No. DPR-18: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 9, 1988 (53 FR 7600). The supplemental submission of May 3, 1988 did not substantially alter the amendment request of September 24, 1987. Therefore it was unnecessary to renotice the amendment request in the **Federal Register.** The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Attorney for licensee: Harry Voigt, LeBoeuf, Lamb, Leiby and McRae, Suite 1100, 1333 New Hampshire Avenue, NW., Washington, DC 20036

NRC Project Director: Richard H. Wessman

Sacramento Municipal Utility District, Docket No. 50-312, Rancho Seco Nuclear Generating Station, Sacramento County, California

Date of application for amendment: July 1, 1988, as supplemented by letter dated September 8, 1988.

Brief description of amendment: The amendment revised the Section 6.0 of the Technical Specifications by deleting the organization charts.

Date of Issuance: September 28, 1988

Effective date: September 28, 1988

Amendment No.: 100

Facility Operating License No. DPR-54: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 12, 1988 (53 FR 30501). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 28, 1988. The letter of September 8, 1988, provided supplemental information which did not change the initial proposed determination of no significant hazards consideration.

No significant hazards consideration comments received: No.

Local Public Document Room location: Sacramento City-County Library, 828 I Street, Sacramento, California 95814.

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: June 13, 1988 (TS 243)

Brief description of amendments: The amendments revise Technical Specification (TS) Tables 3.2.B and 4.2.B by adding the instrumentation used to trip and isolate the High Pressure Coolant Injection and the Reactor Core Isolation Cooling Systems on either low steam supply pressure or high turbine exhaust pressure. The TS are also revised to add turbine exhaust diaphragm high pressure to the lists of conditions that cause Group 4 and 5 isolation in the notes for Table 3.7.A.

Date of issuance: September 23, 1988

Effective date: September 23, 1988, and shall be implemented within 60 days

Amendments Nos.: 155, 151, 126

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 13, 1988 (53 FR 26533). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated September 23, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Tennessee Valley Authority, Dockets Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: August 17, 1988 (TS 253)

Brief description of amendments: The amendments modify Technical Specifications Limiting Conditions for Operation 3.7.E.1, 3.7.E.3, and 3.7.E.4 for the Control Room Emergency Ventilation System (CREVS) by defining them as being not applicable until the withdrawal of the first control rod for the purpose of making the reactor critical from the Unit 2, Cycle 5 outage.

Date of issuance: October 3, 1988

Effective date: October 3, 1988, and shall be implemented within 60 days

Amendments Nos.: 156, 152, 127

Facility Operating Licenses Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1988 (53 FR 33887). The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 3, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611.

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, E11 B33, Knoxville, Tennessee 37902.

NRC Assistant Director: Suzanne Black

Toledo Edison Company and The Cleveland Electric Illuminating Company, Docket No. 50-346, Davis-Besse Nuclear Power Station, Unit No. 1, Ottawa County, Ohio

Date of application for amendment: July 15, 1988

Brief description of amendment: The amendment deleted License Condition 2.C.(3)(t) and incorporated Item 2 of the condition into Technical Specification (TS) Surveillance Requirement 4.7.1.2. Additionally, the amendment also modified TS Section 3/4.7.1.2 to clarify Section 4.0.4 and Bases 3/4.7.1.2.

Date of issuance: September 30, 1988

Effective date: September 30, 1988

Amendment No. 122

Facility Operating License No. NPF-3. The amendment revised the license and the Technical Specifications.

Date of initial notice in **Federal Register:** August 16, 1988 (53 FR 30881). The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated September 30, 1988.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Toledo Library, Documents Department, 2801 Bancroft Avenue, Toledo, Ohio 43606.

Dated at Rockville, Maryland, this 13th day of October, 1988.

For the Nuclear Regulatory Commission

Gary M. Holahan,

Acting Director, Division of Reactor Projects - III, IV, V, and Special Projects Office of Nuclear Reactor Regulation.

[Doc. 88-23983 Filed 10-18-88; 8:45 am]

BILLING CODE 7590-01-D

OFFICE OF PERSONNEL MANAGEMENT

Performance Review Board; Membership

AGENCY: Office of Personnel Management.

ACTION: Notice.

SUMMARY: Notice is hereby given of the appointment of new members of the OPM Performance Review Board.

DATE: October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Anne A. Andrews, Program Development and Evaluation Branch, Office of Personnel and EEO, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415 (202) 632-9402.

SUPPLEMENTARY INFORMATION: Section 4314(c)(1) through (5) of title 5, U.S.C., requires each agency to establish, in accordance with regulations prescribed by the Office of Personnel Management, one or more SES performance review boards. The board shall review and evaluate the initial appraisal of a senior executive's performance by the supervisor, along with any recommendations to the appointing authority relative to the performance of the senior executive.

Office of Personnel Management.

Constance Horner,

Director.

The following Senior Executive Service member has been changed from an alternate member to a regular member of the Performance Review Board of the Office of Personnel Management:

Jean M. Barber, Associate Director for Retirement and Insurance.

The following Senior Executive Service members have been selected to serve as ad hoc members of the

Performance Review Board of the Office of Personnel Management:

Anthony F. Ingrassia, Deputy Associate Director for Personnel Systems and Oversight.

Jerome D. Julius, Deputy Associate Director for Retirement and Insurance.

[FR Doc. 88-24115 Filed 10-18-88; 8:45 am]

BILLING CODE 6325-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-24728]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

October 13, 1988.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 7, 1988 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Arkansas Power and Light Company (70-7452)

Arkansas Power and Light Company ("Arkansas"), 425 West Capitol Avenue, Little Rock, Arkansas 72201, an operating subsidiary of Middle South Utilities, Inc., a registered holding company, has filed a post-effective amendment to its application pursuant to sections 9(a) and 10 of the Act.

Arkansas has, pursuant to prior Commission orders entered into a fuel lease ("Fuel Lease"), dated as of November 18, 1981, with Ozark Fuel Corporation, a Delaware corporation ("Fuel Company"), under which Arkansas leases from the Fuel Company the nuclear fuel, including facilities incident to its use ("Nuclear Fuel"), required for the generation of electric energy by its Unit No. 2 of Arkansas Nuclear One Generating Station ("ANO") (HCAR Nos. 22272, 24239, and 24502 November 13, 1981, November 19, 1986, November 17, 1987, respectively).

Under the terms of the Fuel Lease, the Fuel Company makes payments to all suppliers, processors and manufacturers necessary to carry out the terms of Arkansas' contracts for Nuclear Fuel for ANO, or Arkansas makes such payments and is reimbursed by the Fuel Company. The maximum commitment of the Fuel Company to make payments for Nuclear Fuel is currently $84 million at any one time outstanding, although payments of up to $85 million may be made by the Fuel Company. The Fuel Company has financed these obligations under a Credit Agreement, dated as of November 18, 1981, as amended ("Credit Agreement"), between the Fuel Company and Swiss Bank Corporation, New York Branch. The term of the Credit Agreement is currently through December 1, 1988 ("Termination Date").

It is proposed to amend the Fuel Lease to provide for a termination date of March 1, 1989 to coincide with the proposed Termination Date of the Credit Agreement as it will be further amended by a third amendment ("Amended Credit Agreement"), both agreements containing options to extend for one-year periods. All of the other terms and conditions in both agreements will remain the same. As required by the Fuel Lease, Arkansas would enter into a letter agreement consenting to the Fuel Company entering into the Amended Credit Agreement.

Appalachian Power Company (70-75447)

Appalachian Power Company ("APCo"), 40 Franklin Road, Raonoke, Virginia 24022, a subsidiary of American Electric Power Company, Inc., a registered holding company, has filed a declaration pursuant to section 12(d) of the Act and Rule 44 thereunder.

APCo proposes to sell certain of its assets to GTE South, Inc. ("GTE"). The assets to be sold consist of electric power distribution poles which are jointly used by APCo and GTE pursuant to an Agreement Covering the Joint Use of Poles, dated June 1, 1987 ("Joint Use Agreement"). Pursuant to the Joint Agreement, pole ownership will be adjusted by APCo and GTE initially and annually thereafter to achieve and maintain a ratio of poles used jointly at 60% owned by APCo and 40% owned by GTE. It is proposed that GTE's purchase of the jointly used poles will be funded by the payment of cash to APCo in amounts equal to APCo's Embedded Pole Cost for each of the series of transactions, as defined in, and pursuant to the terms of the Joint Use Agreement. In connection with each proposed sale by APCo, the jointly used poles to be sold will be released from the lien of APCo's Mortgage and Deed of Trust.

System Energy Resources, Inc. (70-7561)

System Energy Resources, Inc. ("SERI"), 188 East Capitol Street, One Jackson Place, Jackson, Mississippi, 39201, a wholly owned subsidiary of Middle South Utilities, Inc. ("Middle South"), a registered holding company, has filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10 and 12(d) of the Act and Rules 44 and 50(a)(5) thereunder.

SERI proposes to sell and leaseback approximately 10-15% of its 90% undivided ownership interest ("Undivided Interest") in Unit 1 of the Grand Gulf Stream Electric Generating Station ("Grand Gulf 1"). SERI plans to enter into Participation Agreements providing for the sale of its Undivided Interest to a trustee ("Owner Trustee/Lessor") acting on behalf of an equity investor or investors ("Owner Participants"), and the simultaneous lease of such Undivided Interest pursuant to separate net lease agreements ("Lease") to be entered into with the Owner Trustee/Lessor which will not exceed a term of 27 years. SERI anticipates that the implicit interest rate of the lease will not be greater than approximately 12%. SERI expects that the maximum aggregate fair market value of its Undivided Interest in Grand Gulf 1 will not exceed $500 million. It is proposed that 15-25% of the aggregate cost will be provided by the Owner Participants and 75-85% of the cost will be borrowed by them. Subject to certain conditions, SERI may have the right to renew the lease for successive terms for the useful life of Gran Gulf 1 at rentals as will be specified in the Lease.

In connection with equity funding of the proposed transaction, letters of credit ("Letter of Credit") may be provided by one or more banks or other financial institutions. Upon the occurrence of certain adverse operating events with respect to Grand Gulf 1, the Owner Participants would be entitled to draw on the Letter of Credit in amounts equal to amounts owed by SERI under the Lease. SERI will become obligated, pursuant to a Reimbursement

Agreement to be entered into between SERI and the banks to repay the amount drawn under the Letter of Credit.

With respect to the portion of the cost to be borrowed, interim financing will be provided by one or more domestic or foreign financial institutions ("Interim Lenders"), who will make non-recourse loans to the Lessor secured by the Lessor's interest in Grand Gulf 1 and certain of the Lessor's rights under the Lease. Interim financing will be provided in return for non-recourse notes ("Interim Notes") of the Lessor. In order to refund the Interim Notes the Lessor will issue refunding notes ("Refunding Notes", and , collectively with the Interim Notes, "Notes") to a Funding Corporation ("Funding Corporation"), unaffiliated with SERI or any of its affiliates. Any funds required by the Funding Corporation to make its loan will be provided, pursuant to a collateral trust indenture through the issuance of debt securities publicly or privately placed.

Upon the occurrence of certain loss events (as defined in the Lease), SERI will be obligated to pay to the Lessor a Casualty Value or Special Casualty Value (as defined in the Lease) reduced by the unpaid principal amount of the Notes, and thereupon either assume full payment responsibility for the Notes, or, if such assumption is precluded, accept transfer of the Owner Participant's interest in the Owner Trust. Upon the occurrence of default events (as defined in the Lease) SERI may also assume the Notes or the Owner Participant's interest after the Owner Participant draws on the Letter of Credit.

SERI has requested an exception from the competitive bidding requirements of Rule 50 of the Act pursuant to Rule 50(a)(5) in order to negotiate and privately place the Notes. It may do so.

Georgia Power Company et al. (70–7562)

Georgia Power Company ("Georgia Power"), an electric utility subsidiary of The Southern Company ("Southern"), a registered holding company, and Georgia Power's subsidiary, Piedmont-Forrest Corporation ("Piedmont-Forrest"), both at 333 Piedmont Avenue, N.E. Atlanta, Georgia 30308, have filed an application-declaration pursuant to sections 6(a), 7, 9(a), 10, and 12(d) of the Act, and Rule 44 thereunder.

Georgia Power proposes to sell, on an ongoing basis, a major portion of its unfinished Rocky Mountain Pumped Storage Hydroelectric Project (the "Project") to Oglethorpe Power Corporation ("Oglethorpe"), a Georgia electric membership corporation comprising thirty-nine electric membership cooperatives. Oglethorpe would complete construction of the Project, which would be jointly owned by Georgia Power and Oglethorpe. The percentage ownership interests of Georgia Power and Oglethorpe in the Project during its construction and after its completion would be proportionate to their investments in it (excluding each party's cost of funds, *ad valorem* taxes, and other minor adjustments). Georgia Power's share in the project will be based on the approximately $128.9 million it has invested in the Project, not on the $224.5 million book value, which includes the cost of those funds.

Under the proposal, Georgia Power would convey the Project (and the primary transmission line and switching station associated with it) to Piedmont-Forrest, and will obtain from its First Mortgage Bond Indenture Trustee a release from the lien on those assets. The purchase price would be approximately $224.5 million, assuming a closing date of November 1, 1988. To provide Piedmont-Forrest with funds sufficient to pay the purchase price, Georgia Power would loan Piedmont-Forrest the purchase price in exchange for a non-interest-bearing note (the "Note") from Piedmont-Forrest in the same amount.

After the Project, the primary transmission line, and the switching station have been released from the lien of Georgia Power's First Mortgage Bond Indenture, Piedmont-Forrest would then convey to Georgia Power an interest in the Project, and to Oglethorpe an interest in the Project, the primary transmission line and the switching station, and the right to complete the Project. Piedmont-Forrest would initially convey to Oglethorpe approximately 3% of the Project, with additional percentages of ownership interests vesting automatically in Oglethorpe on an ongoing basis as Oglethorpe expends funds for the Project's completion. Piedmont-Forrest would reconvey the other 97% of the Project to Georgia Power in consideration for Georgia Power's concellation of the Note. Although it is not expected that Georgia Power's ownership interest will fall below 24.6%, Georgia Power will have an option to fix its ownership interest in the Project at up to 24%.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88–24134 Filed 10–18–88; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–26177; File No. SR–NASD–88–31]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Supervisory Procedures and Redefinition of Office of Supervisory Jurisdiction and Branch Office

The National Association of Securities Dealers, Inc. ("NASD") submitted a proposed rule change on July 22, 1988 (and an amendment thereto on August 26, 1988), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b–4 thereunder to amend Article III, Section 27 of the NASD Rules of Fair Practice to delete certain existing text, modify other text and to add new provisions regarding the supervisory procedures of NASD members and the definitions of Office of Supervisory Jurisdiction and Branch Office. In addition, the amendments deleted the current definition of Branch Office in the NASD By-Laws and portions of the Explanation of the Board of Governors relating to the above-mentioned definitions set out in Schedule C to the By-Laws.

Notice of the proposed rule change together with the substance of the terms of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26052, September 1, 1988) and by publication in the **Federal Register** (53 FR 34858, September 8, 1988). No comments were received with respect to the proposed rule change.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, with the requirements of section 15A and the rules and regulations thereunder.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change, SR–NASD–88–31, be, and hereby is, approved. The NASD has requested that the proposed rule change not be effective until six months after the date of approval by the Commission. Therefore, this proposed rule change will be effective April 13, 1989.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Dated: October 13, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24130 Filed 10-18-88; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 34-26178; File No. SR-NASD-88-34]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Outside Business Activities of Associated Persons of Member Firms

The National Association of Securities Dealers, Inc. ("NASD") submitted on July 27, 1988, and amended on August 15, 1988, a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder. The proposal adds Section 43 to Article III of the NASD Rules of Fair Practice to require registered persons associated with member firms to notify the firms, promptly and in writing, of outside business activities.

Notice of the proposed rule change together with the terms of substance of the proposed rule change was given by the issuance of a Commission release (Securities Exchange Act Release No. 26063, September 6, 1988) and by publication in the **Federal Register** (53 FR 35395, September 13, 1988). One comment letter was received, strongly supporting the proposed rule change.[1]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30-3(a)(12).

Dated: October 19, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24131 Filed 10-18-88; 8:45 am]

BILLING CODE 8010-01-M

[1] Letter from J. Stephen Putnam, President, Robert Thomas Securities, Inc., to the Commission, September 27, 1988.

[Release No. 34-26176; File No. SR-NYSE-87-27]

Self-Regulatory Organizations; New York Exchange, Inc.; Order Approving Proposed Rule Change Relating to Amendments to Rule 325(e) Financial Responsibility Requirement and Rule 134 Error Trade Procedures

I. Introduction.

On August 14, 1987, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Commission, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") and Rule 19b-4 thereunder,[1] a proposed rule change that would, among other changes, increase the minimum level of financial responsibility required for members who execute orders on the floor, codify the Exchange's procedures for resolving error trades, and impose certain record keeping requirements in regard to error trades.[2]

II. Description of Proposed Rule

The proposed rule change would amend NYSE Rule 325(e) to increase the minimum level of financial responsibility required for members who execute transactions on the floor from $50,000 to $100,000.[3] The proposal would also amend Rule 325(e) by adding additional means by which members or lessees can satisfy the financial responsibility requirement. A proposed new section 325(e)(4) would permit a member to elect to comply with the increased financial responsibility requirement by depositing marketable securities, having a value of at least $100,000 (after appropriate haircuts) and which are readily available, with an organization acceptable to the Exchange.

The proposed rule change also would amend the present section 325(e)(4) that permits members to use the value of their membership to meet the financial responsibility standard. Currently, in order to satisfy the financial responsibility standard by using the value of a membership, the value must equal or exceed $75,000. Under the proposed amendment, the value of a member's seat would have to equal or exceed $150,000. In addition, this provision would renumber section 325(e)(4) as section 325(e)(5).

Similarly, a proposed new section 325(e)(6) would permit a lessor to pledge his seat to satisfy his lessee's financial responsibility requirement under Rule 325(e). Under this provision, such a pledge would only be accepted by the Exchange as satisfying the financial responsibility standard where the lease agreement expressly sets forth the pledge of the lessor's seat on the lessee's behalf, free of any lien or encumbrance, and the value of the lessor's membership equal or exceeds $150,000.

The final portion of the proposed rule change amends NYSE Rule 134 dealing with differences or omissions in clearing transactions. The NYSE's proposed rule change would add a new paragraph (g) to Rule 134. Under this provision, a member or member organization may have a trade as to which he made an error (an "error trade") cleared in an account in his own name or the account of his member organization, or in the name of another member or member organization, with the agreement of such other member or member organization (a "take in").[4]

In addition, this provision would require every member to make available to the Exchange, upon request, accurate and complete records of all error trades cleared in his own account, or in the error account of his associated member organization. Where error trades of $3,000 or more are cleared in the error account of another member or member organization on the member's behalf, the member who executed the trade will be required to maintain accurate and complete records of the error trade, which shall be available to the Exchange upon request. Under the proposed rule these records shall include: (1) Audit trail data elements prescribed under NYSE Rule 132; (2) the nature and amount to the error; (3) the member of member organization that cleared the error trade; (4) the means whereby the member resolved the amount of the error trade with the member or member organization who cleared the trade on his behalf; (5) the aggregate amount of liability incurred and outstanding, as of the time each error trade entry is recorded, as to error trades that have been cleard by other members or member organizations; and (6) such other information as the Exchange may require from time to time.

[1] 15 U.S.C 78s(b) and 17 CFR 240.19b-4.

[2] The proposed rule change was noticed in Securities Exchange Act Release No. 25015, October 9, 1987, 53 FR 39321. No comments were received from the Commission's notice of this proposal.

[3] As stated in NYSE Rule 325(e), this requirement is in addition to the net capital requirement for brokers or dealers established by the Commission in Rule 15c3-1. *See* 17 CFR 240.15c3-1 (1987).

[4] Thus, by agreement, an executing broker may place a uncompared trade that remains unresolved by the end of the clearing process in the amount of another member or member organization.

III. Discussion

The amendments to NYSE Rule 325(e) are intended to assure that financial responsibility requirements and standards for NYSE members are commensurate with today's levels of market activity, volatility, and order size. The Exchange notes that average trade size and market volatility have both increased since the last increase in the financial responsibility standard in 1980.[5] In view of this, the Exchange believes that the proposed increase in the financial responsibility standard is appropriate in light of the changes in the market since the 1980 amendment. The other proposed amendments to Rule 325(e) increase the minimum seat value as collateral provision to conform it with the increased financial responsibility standard and provide members with alternative means to comply with the Exchange's financial responsibility standard for themselves or for their leassee.

The proposed amendment to NYSE Rule 134 is intended to codify current procedures used by members and member organizations for the resolution of error trades and to impose certain record keeping requirements on members. The Exchange states that over a period of years an informal practice has developed among members which supplements current NYSE procedures for the resolution of error trades. Under this practice, an executing broker may place an error trade in the account of another member or member organization. Where an executing broker does not have an error account in his own name in which he can place an error trade, the member must rely on the services that another member or member organization may agree to provide in "taking in" an error trade. Under circumstances where a member has an error account but the cost of recording and correcting the error may be greater than the actual amount of the error, the specialist in the security may agree to "take in" the error trade as a service to his customers. As the Exchange notes, a specialist is not required to "take in" error trades of his customers. The proposed new paragraph (g) of Rule 134 is intended to make clear that a member or member organization can agree to "take in" an error trade of another member or member organization.

The proposed error trade record keeping requirements in Rule 134(g) are intended facilitate NYSE monitoring of error trades. As discussed previously, every member or member organization would keep records of all error trades cleared in their account. This provision would also require every executing broker to maintain audit trail records of every error trade of $3,000 or more cleared in the account of another member or member organization on the member's behalf. The Exchange believes that these requirements will help it maintain proper regulatory safeguards by enabling the Exchange to review error trade activity where appropriate.

As noted previously, the Commission did not receive any written comments to the **Federal Register** notice of the proposed rule change.[6] The NYSE, however, did receive six written comments in response to a January 21, 1987, Information Memorandum to its members ("January 21 Memorandum") which solicited comments on possible enhancements to financial responsibility standards and procedures for handling error trades which formed the basis for the proposed rule change.[7] These comments and the Exchange's response were discussed in detail in the Commission's notice of the proposed rule change published in the **Federal Register.**[8] In brief, the majority of ocmment letters that addressed the proposal to increase the financial responsibility requirement supported the concept.[9] Concerning error account procedures, the Exchange's January 21 Memorandum contained a proposal to require members to have their own error accounts. In response to critical comments the Exchange received, and its own reassessment of the proposal, the NYSE decided not to require mandatory error accounts.[10] The Commission has closely reviewed the provisions of the proposed rule change and believes that they are consistent with the requirements of the Act and, accordingly, should be approved. In particular, the Commisson believes that the proposed amendments to Rule 325(e) are consistent with section 6(b)(5) of the Act in that they promote the protection of investors and the public interest by increasing the minimum level of financial responsibility that must be demonstrated by all members who execute orders on the floor of the Exhange. The Commission believes that the proposed increase in the NYSE's minimum financial responsibility standard is reasonable in view of the substantial changes that have occurred in the market in the eight years since the last change in the financial responsibility in requirement.[11] The Commission notes that the size of an average trade executed on the NYSE floor, the value of securities represented in those trades, and the amount of trading, have increased substantially since the financial responsibility standard was last amended by the Exchange in October 1980.[12]

Similarly, the proposed new paragraph (g) to Rule 134 is consistent with section 6(b)(5) in that the codification of practices by which members may place error trades in the account of another member or member orgainzation, together with the proposed error trade record keeping requirements, foster cooperation and coordination with persons engaged in regulating, clearing, settling and facilitating transactions in securities.

In addition, the Commission believes that the proposed amendments to Rule 325(e) and Rule 134(g) are consistent with section 6(c)(3) of the Act which provides that on exchange may deny or condition membership of a registered broker or dealer where a member does not meet such standards of financial responsibility or operational capability as are prescribed by the rules of the exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change be approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Dated: October 13, 1988.

Shirley E. Hollis,

Assistant Secretary.

[FR Doc. 88-24132 Filed 10-18-88; 8:45 am]

BILLING CODE 8010-01-M

[5] In the NYSE's 1980 amendment to Rule 325(e), the financial responsibility standard was increased from $25,000 to the current level of $50,000 and the standard was made applicable to all members. That increase was made in response to increased trading levels on the Exchange. *See* Securities Exchange Act Release No. 17206, October 9, 1980, 45 FR 69082.

[6] *See* note 2, *supra.*

[7] *See* letters from Harry Buonocore, an independent broker-dealer; Alan Goldberg, on behalf of Einhorn and Co. ("Einhorn"); A.L. Meentemeier, on behalf of Securities Settlement Corporation ("SSC"); Lawrence O'Donnell and Co., an NYSE specialist firm; and two letters from the Organization of Two Dollar Brokers ("OTB").

[8] *See* note 2, *supra.*

[9] Buonocore, Lawrence O'Donnell and Co., and the OTB all supported some form of increase in financial responsibility requirements. Only Einhorn opposed an increase.

[10] The letters from SSC and Lawrence O'Donnell and Co. were generally critical of requiring members to have their own error account. Einhorn supported a mandatory error account.

[11] *See* note 5, *supra.*

[12] For example, for the year 1980, a total of 11.4 billion shares were traded on the NYSE with an average trade size of 872 shares and an average price per share of $33.00. *See.* NYSE *Fact Book 1981* p. 3-5. For the year 1987, a total of 47.8 billion shares were traded on the NYSE with an average trade size of 2112 shares and an average price per share of $39.20. *See* NYSE *Fact Book 1988,* p. 7-10.

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; New York County, NY

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in New York County, New York.

FOR FURTHER INFORMATION, CONTACT: Richard A. Maitino, Project Executive Director, New York State Department of Transporation, State Campus, 1220 Washington Avenue, Albany, New York 12232, Telephone: (518) 457–3690. A Community Project Office is being established at 141 5th Avenue, 10th Floor, New York, NY 10010. Contact: Robert J. Ronayne, Director of Development and Design, Telephone (212) 979–6630.

or

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone: (518) 472–3616.

SUPPLEMENTARY INFORMATION: The Federal Highway Administration, in cooperation with the New York State Department of Transportation will prepare an Environmental Impact Statement (EIS) on a proposal to reconstruct Route 9A in New York County, New York. At its southern limit, the project would begin at Battery Place and the Brooklyn Battery Tunnel. The project would extend approximately 5 miles to its northern limit in the vicinity of 59th Street where it would connect to the existing Route 9A Viaduct. The proposed improvement would involve the reconstruction of the existing roadway inclusing structures, pavement and appurtenances and construction of a continuous bikeway and walkway in order to provide needed improvements to the deteriorated infrastructure, improve traffic flow, pedestrian and traffic safety, air quality, and pedestrian access to the waterfront.

In 1986, a West Side Task Force was appointed by Governor Cuomo and Mayor Koch to evaluate the roadway needs on the West Side. The Task Force proposed an alternative which, prior to detailed evaluation, is considered the preferred alternative. The Task Force proposed a replacement roadway with the understanding that as the project is advanced, some adjustments in the recommended concept may become necessary based upon further traffic, engineering, socioeconomic and environmental analyses. The replacement roadway, as envisioned by the Task Force, would provide generally three lanes in both the northbound and southbound directions with portions either depressed or elevated to provide capacity adjustments at locations of heavy pedestrian and vehicle usage. Between the Brooklyn-Battery Tunnel and Chambers Street, an additional two-lane depressed, reversible roadway would be provided. At Canal Street, a northbound overpass would carry three lanes while there would be two lanes at-grade. Additionally, in the northbound direction there would be between 32nd Street and 44th Street, a two-lane depressed roadway and a two-lane at-grade roadway. A two lane viaduct, in each direction, would extend from the existing viaduct at 59th Street to an at-grade facility in the vicinity of 49th Street. In this section there also would be a 2-line roadway in each direction.

At this time, other alternatives under consideration include taking no action, reconstructing the roadway with similar configuration and minor improvements at intersections, and a modification to the Task Force alternative. The modifications would include an at-grade roadway south of Chambers Street instead of the depressed, reversible lanes and a two-lane northbound viaduct at Canal Street instead of a three-lane viaduct. Also studied will be other segment alternatives that may be identified as the project is advanced. The build alternatives would also provide for a pedestrian/bicycle path. In addition, consideration will be given to staged construction of the new facility.

Letters describing the proposed action and soliciting comment will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in this proposal. A scoping meeting with cognization Federal, State and local agencies and private organizations and citizens is tentatively scheduled for late November 1988. The purpose of the project scoping and the Scoping Meeting is to further identify the significant issues to be analyzed in the EIS process. Public information sessions will be held to allow interested individuals and agencies to review project information prior to the scoping meeting. Public notice will be given of the time and place of the scoping meetings and information sessions and locations where supplemental information will be available. The draft EIS, when prepared, will be available for public and agency review and comment, at which time a public hearing will be held.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action should be directed to the New York State Department of Transportation or the Federal Highway Administration at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation of Federal programs and activities apply to this program.)

Dated: October 6, 1988.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany New York.

[FR Doc. 88–24078 Filed 10–18–88; 8:45 am]

BILLING CODE 4910-22-M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

DEPARTMENT OF THE TREASURY

Internal Revenue Service

Applicable Rate of Interest on Nonqualified Withdrawals From a Capital Construction Fund

Under the authority in section 607(h)(4)(B) of the Merchant Marine Act, 1936, as amended (46 U.S.C. 1177(h)(4)(B)), we hereby determine and announce that the applicable rate of interest on the amount of additional tax attributable to any nonqualified withdrawals from a Capital Construction Fund established under section 607 of the Act shall be 8.57 percent, with respect to nonqualified withdrawals made in the taxable year beginning in 1988.

The determination of the applicable rate of interest with respect to nonqualified withdrawals was computed, according to the joint regulations issued under the Act (46 CFR 391.7(e)(2)(ii)), by multiplying 8 percent by the ratio which: (a) The average yield on 5-year Treasury securities for the calendar year immediately preceding the beginning of such taxable year bears to (b) the average yield on 5-year Treasury securities for the calendar year 1970. The applicable rate so determined

was computed to the nearest one-hundredth of one percent.

Dated: October 12, 1988.

So Ordered By: Maritime Administrator, Maritime Administration; Administrator, National Oceanic and Atmospheric Administration; Assistant Secretary for Tax Policy, Department of the Treasury.

John Gaughan,

Maritime Administrator.

William E. Evans,

Administrator, National Oceanic and Atmospheric Administration.

O. Donald Chapoton,

Assistant Secretary for Tax Policy.

[FR Doc. 88-24060 Filed 10-18-88; 8:45 am]

BILLING CODE 4910-81-M

DEPARTMENT OF THE TREASURY

Customs Service

Application For Recordation of Trade Name: "TUNE BELT," Tune Belt, Inc.

ACTION: Notice of application for recordation of trade name.

SUMMARY: Application has been filed pursuant to § 133.12, Customs Regulations (19 CFR 133.13), for the recordation under section 42 of the Act of July 5, 1946, as amended (15 U.S.C. 1124), of the trade name "TUNE BELT," used by Tune Belt, Inc., a corporation organized under the laws of the State of Ohio, located at 2601 Arbor Place, Cincinnati, Ohio 45209.

The application states that the trade name is used in connection with clothing, manufactured by Kama Corporation, LTD. in Taipei, Taiwan.

Before final action is taken on the application, consideration will be given to any relevant data, views or arguments submitted in writing by any person in opposition to the recordation of this trade name. Notice of the action taken on the application for recordation of this trade name will be published in the **Federal Register.**

DATE: Comments must be received on or before December 19, 1988.

ADDRESS: Written comments should be addressed to the Commissioner of Customs, Attention: Value, Special Programs and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (Room 2104).

FOR FURTHER INFORMATION CONTACT: Bettie Coombs, Value, Special Program and Admissibility Branch, 1301 Constitution Avenue, NW., Washington, DC 20229 (202) 566-5765).

Dated: October 13, 1988.

Marvin M. Amernick,

Chief, Value, Special Programs and Admissibility Branch.

[FR Doc. 88-24072 Filed 10-18-88; 8:45 am]

BILLING CODE 4820-02-M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported For Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85-5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit "The Romantic Spirit: German Drawings, 1780-1850, from the German Democratic Republic" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. I also determine that the temporary exhibition or display of the listed exhibit objects at the Pierpont Morgan Library, New York City, New York, beginning on or about November 17, 1988 to on or about January 29, 1989, is in the national interest.

Public notice of this determination is ordered to be published in the **Federal Register.**

Date: October 13, 1988.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 88-24194 Filed 10-18-88; 8:45 am]

BILLING CODE 8230-01-M

[1] A copy of this list may be obtained by contacting Ms. Lorie Nierenberg of the Office of the General Counsel, USIA. The telephone number is (202) 485-8827, and the address is Room 700, U.S. Information Agency, 301-4th Street, SW., Washington, DC 20547.

Corrections

Federal Register
Vol. 53, No. 202
Wednesday, October 19, 1988

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents and volumes of the Code of Federal Regulations. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 228

[FRL-3451-4]

Ocean Dumping; Site Designation for Georgetown Harbor et al.

Correction

In rule document 88-21771 beginning on page 37558 in the issue of Tuesday, September 27, 1988, make the following corrections:

§ 228.12 [Corrected]

1. On page 37562, in the second column, after amendatory instruction 3, in § 228.12(a)(3), in the land description for "Pensacola, FL", in the second line, "8.3" should read "18.3", and in the third line, "18.3" should read "18.2".

2. On the same page, in the third column, in amendatory instruction 5, in the second line, footnote reference 6 inadvertently appeared without a corresponding footnote, which should read as set forth below:

[6] Note: This removal should be made in addition to the words and coordinates already specified for removal in the August 14 Final Rule concerning the "Morehead City Harbor" ODMDS in 40 CFR 228.12(a)(3). Also, it should be noted that the last coordinate component presented on page 30361 in the text of the August 14 Final Rule should read 76°45'0" W. instead of 70°45'0" W. Furthermore, § 228.12 cited in the August 14 Final Rule as "Delegation of management authority for ocean dumping sites" should have been cited as "Delegation of management authority for interim ocean dumping sites" per the 40 CFR revised as of July 1, 1987.

BILLING CODE 1505-01-D

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[T.D. 8232]

Income Tax; Credit for Clinical Testing Expenses for Certain Drugs for Rare Diseases or Conditions

Correction

In rule document 88-22375 beginning on page 38708 in the issue of Monday, October 3, 1988, make the following corrections:

§ 1.28-1 [Corrected]

1. On page 38711, in the third column, in § 1.28-1(b)(4), in the fourth line, "23" should read "28".

2. On the same page, in the third column, in § 1.28-1(c)(1)(iii), in the fifth line, "335(b)" should read "355(b)".

3. On page 38712, in the first column, in § 1.28-1(c)(2), in the last line, "health" should read "healthy".

4. On the same page, in the same column, in § 1.28-1(d)(1)(i)(B), in the ninth line, "or" should read "of".

5. On page 38713, in the first column, in the 22nd line, in § 1.28-1(d)(1)((ii)(D), insert a comma after "$500,000/ $2,000,000".

6. On the same page, in the same column, in § 1.28-1(d)(1)(iii), in the 16th line, "factor" should read "factors"; in the 23rd line, insert a semicolon after "therapy"; and in the 24th line "become" was misspelled.

7. On the same page, in the second column, in § 1.28-1(d)(2)(iii)(E), in the first line, "relating" was misspelled.

8. On page 38714, in the first column, in § 1.28-1(d)(4)(i), in the sixth line, "related" should read "relating".

9. On the same page, in the second column, in § 1.28-1(d)(5)(iii), in the fifth line, "paragraphs" should read "paragraph".

10. On the same page, in the third column, in § 1.28-1(d)(5)(iv)(C), in the first line, "It" should read "If".

11. On page 38715, in the first column, in § 1.28-1(d)(6)(iii)(A), in the fifth line, "amount" should read "among".

Note: For a Department of the Treasury correction to this document see the Rules section of this issue.

BILLING CODE 1505-01-D

federal register

Wednesday
October 19, 1988

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

Urban Homesteading Program; Implementation of 1987 Statutory Amendments and Revision of Selected Program Procedures; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 590

[Docket No. R-88-1413; FR-2461]

Urban Homesteading Program; Implementation of 1987 Statutory Amendments and Revision of Selected Program Procedures

AGENCY: Office of Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This rule would implement amendments to the Urban Homesteading Program regulations made by sections 517 (c) and (d) of the Housing and Community Development Act of 1987 ("1987 Act"). In accordance with section 517(c) of the 1987 Act, the rule would eliminate the former three-pronged "special priority" test for the selection of homesteaders and substitute a single priority selection criterion—that the prospective homesteader be a "lower-income" person or family. The rule also would implement section 517(d) of the 1987 Act, which authorizes States and units of general local government participating in the program to designate a "qualified non-profit organization", or a public agency, to act as the local urban homesteading agency responsible for selecting homesteaders and properties, and for accepting title to and conveying the properties to homesteaders. Finally, the rule also would make a number of specific changes in program procedures, such as specifying certain additional documents that must be submitted with a locality's urban homesteading application, setting a guideline that a local urban homesteading agency should generally anticipate homesteading a minimum of five properties per year in order to participate effectively in the program, and raising the existing limit on the values of properties selected for homesteading from $20,000 to $25,000 for one-unit properties, and from $5,000 to $8,000 per additional unit in two- to four-unit properties. In addition, the program's fund reservation system is being changed from an annual reservation based on estimated annual needs to a system of first-come, first-served reservations for specific properties.

DATE: *Comments Due:* December 19, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Marion F. Connell, Director, Urban Homesteading Program, Rehabilitation Loans and Homesteading Division, Office of Urban Rehabilitation, U.S. Department of Housing and Urban Development, 451 7th Street, SW., Room 7168, Washington, DC 20410. Telephone: (202) 755-5324. (This is not a toll free number.)

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control number 2506-0042. This control number is currently being reviewed by OMB to extend its applicability for this proposed rule. Public reporting burden for each of these collections of information is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Findings and Certifications.* Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., Room 10276, Washington, DC 20410, and the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

Background

Section 517 of the Housing and Community Development Act of 1987 (Pub. L. 100-242) amended section 810 of the Housing and Community Development Act of 1974, 12 U.S.C. 1706e ("1974 Act"), which authorizes the Urban Homesteading Program, as follows:

Section 517(c) eliminates the former three-pronged "special priority" test for the selection of homesteaders and substitutes a single priority selection criterion—that the applicant should be a "lower-income" person or family.

Section 517(d) authorizes States and units of general local government to designate a "qualified non-profit organization," or a public agency, to act as the local urban homesteading agency (LUHA)—including accepting title to and conveying properties to homesteaders if they so choose.

In addition to the amendments made by sections 517 (c) and (d) of the 1987 Act, section 517(a) amends the 1974 Act to extend the authority for the local property and the multifamily property urban homesteading demonstrations. These demonstrations would be implemented by Notice, rather than by permanent regulations, if they were reinstated. However, the Department is not currently planning to implement either of these demonstrations in FY 1989.

Also, section 517(b) amends section 106(d)(3)(A) of the 1974 Act to allow State participants in the Urban Homesteading Program to use Community Development Block Grant (CDBG) funds for urban homesteading administrative expenses, consistent with the authority available to CDBG grantees other than States. This provision will be implemented by an appropriate revision to the State CDBG Regulations, rather than in this rule. However, this provision is self-executing, and, therefore, it does not require regulatory action to be effective. States participating in the Urban Homesteading Program may charge eligible administrative expenses incurred after February 5, 1988 (the effective date of the 1987 Act) in operating their urban homesteading programs to their otherwise available State CDBG administrative funds, provided such administrative expenditures would satisfy other Title I requirements.

Other changes to Part 590 in this rule are proposed at HUD's initiative. Generally, these changes stem from the need to update certain provisions in keeping with comments received from Congressional committee reports, comments from local officials, and HUD's own experience in administering the program since the last revision of the regulations (see 50 FR 25941, June 24, 1985).

The principal proposed amendments to Part 590 are discussed below in the order that they appear in the proposed rule. Other technical amendments are proposed in the following sections of Part 590: § 590.1(a) and (b); § 590.5 (definitions of "Act" and "LUHA" are amended; new definitions of "lower-income families" and "qualified community organization" are added; and definition of "locally owned

property" is deleted); § 590.7; § 590.11(c) and (d); § 590.13; § 590.15; § 590.17(a) and (b)(3); § 590.19; § 590.23; § 590.29; and 590.31. These technical amendments have not been separately discussed below, since they are either editorial in nature, or they are conforming changes to make the amended provision consistent with one of the principal amendments in the proposed rule.

Amendments to Part 590

In § 590.7, "Program requirements," and § 590.13(b), "Standards for HUD review and approval of a local urban homesteading program," the proposed rule would add guidance that, in general, local agencies shall select neighborhoods so as to be able to anticipate homesteading a minimum of five properties per year, in order for their programs to be cost-effective and have discernible neighborhood impact. These provisions are proposed in view of the high demand for scarce program funds in order to establish a reasonable threshold level necessary for continued program participation. Regional economic conditions dictate not only the availability of federally-owned properties but also their price range. These factors, in turn, influence the feasibility of homesteading in the region. Over time, economic conditions shift within regions of the country, so that homesteading may become infeasible in a previously active area due to a lack of foreclosed single-family properties in the HUD, VA, and FmHA inventories, or the increased cost of such properties. Conversely, as more properties become available or their values decrease, homesteading may become very active in an area previously inactive. Without a threshold program level, communities could continue indefinitely in the program, operating ineffective, expensive, low level programs, while other areas with greater need for program resources find it difficult or impossible to obtain funding.

Under "Program requirements" at § 590.7(b)(2), the homesteader selection section would be modified to conform the regulations to section 517(c) of the 1987 Act. The three existing priority selection criteria would be deleted and one priority criterion set forth, which would give priority to eligible "lower-income families or individuals," as defined by 24 CFR Part 813. Since HUD has already advised local urban homesteading agencies that this provision is considered self-executing, local agencies should already be selecting homesteaders in accordance with the new single criterion for priority. However, homesteaders notified of their selection in accordance with the previous special priority criteria before February 5, 1988 (the effective date of the 1987 Act) remain entitled to properties, if they have not received them yet. The proposed rule would make no change in the effect of the statutory priority from existing rules, apart from the simplification of the criterion for priority selection itself. Specifically, a local urban homesteading agency (LUHA) still may not select a homesteader who is not entitled to priority if there is an available priority homesteading candidate who has applied and is qualified for the particular property involved. LUHAs should document their homesteader selection files to show that they are complying with this priority. In addition, LUHAs are required to ensure that homesteaders are matched to the bedroom size of the property so that homesteaders are not under- or over-housed.

Section 590.7(b)(2) would also be amended to describe the extent to which certain homesteader selection criteria based on residency may be imposed by participating LUHAs if they so choose. However, this description should not be construed to authorize participating LUHAs to use such criteria in a manner which would override the statutory priority for lower-income persons. That is, if there is a lower-income applicant otherwise qualified to participate in the program, who does not meet the locally imposed residency or other criteria, then that applicant would still take precedence over any non-lower income candidate meeting such local criteria.

Finally, a new provision, designated (iii), has been added to assure that membership in, or ties to, particular private organizations are not made a factor affecting homesteader selection. With the advent of non-profit community organizations as LUHAs, HUD believes it is important to specify that membership in any private organization doing business with such an organization, and any other ties to a particular private organization, are not made criteria for homesteader selection.

Also under "Program requirements" in § 590.7, amendments to subparagraphs (b)(4) and (b)(6) are proposed in order to clarify the LUHA's responsibility to assist in securing compliance with section 312 loan terms and to find a replacement homesteader where it appears that the initial applicant has defaulted on a section 312 loan during the homesteader's conditional title period. During this period, foreclosure of the section 312 loan is generally not a viable option, since it either results in undue loss to HUD, if HUD forecloses only on the homesteader's interest in the property, or it results in the property being lost to the homesteading program, if the LUHA gives up its reverter interest in the property and allows HUD to foreclose and then to sell the property on the open market. The best option both to minimize HUD's loss and to preserve the property for homesteading is for the local agency to identify a successor homesteader who will assume the section 312 loan, or as much of the loan as the property's value at the time of assumption will support. The proposed amendments are designed to give local agencies clearer regulatory notice of this policy, which is more fully described in a notice on this subject issued under HUD's Unified Issuances System. Also, the amendments to § 590.7(b)(6) would allow HUD to shorten the homesteading period required of the successor homesteader under that section, if that is necessary to attract a successor homesteader.

Under "Program requirements" in § 590.7, a new paragraph (c) would be added entitled "Designation of LUHA." As at present, the applicant State or unit of general local government may act as its own local urban homesteading agency (LUHA), conducting the program, and accepting and conveying title to federally owned properties in its own name, or it may designate a legally separate and independent public agency to do so. Similar to present practice, the designation is approved by HUD as part of the program application approval process, and it remains in effect until a new LUHA is designated by the applicant by a program amendment approved by HUD, or the local urban homesteading program is closed out. Finally, also as presently permitted (although not specified in the current regulation), the proposed rule specifies that the LUHA may carry out its program functions through a third party contractor, consultant, or agent, except for the acceptance and conveyance of title to properties. The proposed regulation makes clear that the third party agreement must be in writing, and it may not relieve the LUHA or the applicant of responsibility for the conduct of the program.

However, based on section 517(d) of the 1987 Act, HUD also proposes to allow qualified community organizations to act as LUHAs. As provided by the 1987 Act, qualified community organizations are nonprofit corporations whose directors serve without pay and which qualify as IRS section 501(c)(3) tax exempt organizations. Consistent with present

practice, any designated LUHA (whether public or private) must have legal authority to accept and convey title to properties for homesteading purposes. The proposed regulation specifically provides that this key function may not be passed on to another entity by the LUHA, unless HUD approves a program amendment designating a new LUHA. This is necessary because up to three Federal agencies must know on a day-to-day basis what local entity they are authorized to deal with in conveying properties, and to assure that the LUHA remains properly accountable for the properties it obtains, both to HUD and to the homesteaders who deal with the LUHA.

Finally, the proposed regulation would require a written agreement between the LUHA and the applicant, and it would specify certain provisions which the agreement must, at a minimum, contain. HUD believes that a written agreement detailing the responsibility of the LUHA is essential for non-profits to act as LUHAs. HUD also believes that program responsibilities will be clarified and accountability strengthened if designated public agencies are also required to enter into such agreements with the responsible States and units of general local government.

Under "Applications" at § 590.11, the proposed rule would require local urban homesteading agencies applying for the first time to submit additional information in their application package. HUD is now requesting a description of the applicant's proposed homesteader selection procedures which complies with the 1987 Act and § 590.7(b)(2) of the regulations, copies of the applicant's proposed legal documents complying with § 590.7(b)(3), (5) and (7), an estimate of the number of properties to be acquired during the program year, and a copy of the applicant's written agreement designating any local urban homesteading agency in compliance with § 590.7(c). Receipt of these specific documents is necessary to avoid serious flaws in program design which HUD has found more difficult to correct after the fact. The Department still wishes to offer maximum latitude to local agencies administering the program, but several recent applicants have commented that they prefer more detailed information on these matters at program start up. Similarly, in § 590.11(b) HUD is requiring previously approved applicants to submit this new information for the first program year following the effective date of the final rule containing this provision.

Under "Transfer of HUD-owned property" at § 590.17(b)(4) and under "Reimbursement to FmHA and VA" at § 590.18(c)(1), the administratively imposed maximum amount that may be charged to section 810 appropriations for acquisition of federally-owned single-dwelling unit properties would be raised from $20,000 to $25,000, in keeping with suggestions from the House-Senate Conference Committee on H.J. Res. 395 (FY 1988 Appropriations Act) in House of Representatives Report No. 100–498 at page 843. This will help keep pace with inflation in real estate market values being experienced in some areas of the country. This cost cap has not been adjusted since 1985. HUD does, however, propose to amend § 590.17 and § 590.18 to delete field office authority to grant "local program-wide" exceptions to this acquisition cost cap, because of the need of further target the limited program funds to sections of the nation experiencing softer real estate markets. Under the proposed rule, the price paid for a property would be the as-is fair market value, not to exceed $25,000, or a negotiated lesser amount, unless an exception for an individual property is granted by a HUD Field Office. An additional amount up to $8,000 per unit may also be charged to section 810 funds for properties with two to four dwelling units. This is an increase from $5,000 per additional dwelling unit, a figure which had not been adjusted since the inception of the program. In addition, the 30 day time frame for which HUD/FHA has been obligated to suspend its routine property disposition activity in urban homesteading neighborhoods is shortened to 21 days to reflect actual program experience and realize economies for the Department.

At § 590.21, "Reservation and reduction of funds," the proposed rule would provide for reduction of funds when there are no affordable, federally-owned properties available due to a change in market conditions for the area and establishes a "first come, first served" policy for fund reservations. That is, funds would not be reserved for a LUHA only when actual properties have been identified for acquisition. This is necessary so that scarce resources will not be set aside for a LUHA whose housing market may have improved considerably, thereby reducing the inventory of available, affordable properties, since submission of the Annual Request for Participation. Also, this policy change will minimize the need for fund re-allocations at the end of each fiscal year. Similarly, at § 590.23, "Program close-out," the proposed rule gives HUD specific authority to terminate a homesteading program if such market conditions have existed for two fiscal years and are likely to persist for the next fiscal year. Section 590.23(c) is also revised to make the LUHA's obligation to continue to monitor, enforce, and implement existing agreements with homesteaders after close-out.

Finally, at § 590.31(e), the proposed rule would clarify the remedial standard under which HUD may direct the LUHA to repay HUD for homestead properties that the LUHA has mishandled. The former standard on its face dealt only with properties that the LUHA had "converted to its own use." This standard clearly covered properties that the LUHA had sold, rented, or used for its own purposes without HUD approval; it did not as clearly cover situations in which the LUHA's negligent failure to preserve and protect the property permitted deterioration that made it infeasible to homestead the property. The revised language of the proposed rule would correct this oversight.

Findings and Certifications

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980. Sections 590.11 (a), (b), (c) and (d); § 590.17(b); § 590.18(b); § 590.21; § 590.25; and § 590.29(c) of this proposed rule have been determined by the Department to contain collection of information requirements. Information on these requirements is provided as follows:

ANNUAL REPORTING BURDEN, PROPOSED RULE—URBAN HOMESTEADING PROGRAM

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per responses	Total hours
Application (2506-0042)	590.11 (a) and (d)	20	1.00	30	24.00	480
Amendment (2506-0042)	590.11(c)	13	1.00	13	4.00	52
Annual Request for Program Participation (2506-0042)	590.11(b)	112	1.00	112	2.00	224
Verification of Fund Availability, HUD-40050 (2506-0042)	590.17(b), 590.18, 590.19, 590.21	132	4.00	528	0.25 (15 min.)	132
Homesteading Property Addition, HUD-40063 (UHPMIS) (2506-0042).	590.29(c)	132	4.00	528	0.50 (30 min.)	264
Quarterly Property [1] Report (UHPMIS) (2506-0042)	590.29(c)	132	1.34	176	0.25 (15 min.)	44
Quarterly Progress Report (UHPMIS) (2506-0042)	590.29(c)	192	4.00	768	1.00	768
Recordkeeping for Local Urban Homesteading Programs	590.25	192	1.00	192	3.00	576
Total annual burden						2,540

[1] This report replicates data submitted on the HUD-40063. LUHAs do not submit it if it is correct. Less than one-third make additional corrections.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR Part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410.

This rule would not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291. Analysis indicates that it would not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the Undersigned hereby certifies that this rule would not have a significant economic impact on a substantial number of small entities. The rule would implement several statutory provisions that improve the Urban Homesteading Program. These changes will have neither a significant economic impact on, nor an effect on, a substantial number of small entities.

The Catalog of Federal Domestic Assistance Program number is 14.230.

This rule was listed as item number 995 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854) under Executive Order 12291 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 590

Urban homesteading, Administrative practice and procedure, Grant programs: housing and community development, Low and moderate income housing.

Accordingly, the Department proposes to revise 24 CFR Part 590 to read as follows:

PART 590—URBAN HOMESTEADING

Sec.

590.1 Scope and purpose of regulation.
590.3 Waiver authority.
590.5 Definitions.
590.7 Program requirements.
590.9 Listing of HUD-owned, VA-owned, and FmHA-owned properties.
590.11 Applications.
590.13 Standards for HUD review and approval of a local urban homesteading program.
590.15 Urban homesteading program participation agreement.
590.17 Transfer of HUD-owned property.
590.18 Reimbursement to FmHA and VA.
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Authority: Sec. 810 of the Housing and Community Development Act of 1974 (12 U.S.C. 1706e); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

§ 590.1 Scope and purpose of regulation.

(a) *Scope.* This part applies to the Urban Homesteading Program authorized under section 810(b) of the Housing and Community Development Act of 1974. The program is generally administered through the Department's field offices, which can provide information to the public about the localities participating, as well as technical assistance to localities about applying for and operating the program.

(b) *Purpose.* The purpose of the Urban Homesteading Program is to use existing housing stock to provide homeownership opportunities, primarily for lower income families, thereby encouraging public and private investment in selected neighborhoods and assisting in their preservation and revitalization. The program provides for the transfer without payment to a local urban homesteading agency (LUHA) of federally owned properties for use in a HUD-approved local urban homesteading program.

§ 590.3 Waiver authority.

HUD may waive any requirement of this part not required by law whenever it determines that undue hardship would result from applying the requirement, or where applying the requirement would adversely affect achievement of the purposes of the program.

§ 590.5 Definitions.

"Act" means section 810 of the Housing and Community Development Act of 1974, as amended from time to time.

"Applicant" means any State or unit of general local government that applies for HUD approval of a local urban homesteading program under these regulations.

"Federally owned property" means any real property to which the Secretary of HUD, the Secretary of Agriculture or the Administrator of Veterans Affairs holds title and which is:

(1) Improved with a one- to four-family residence;

(2) Unrepaired and not the subject of an outstanding repair or sales contract; and

(3) Not occupied by an individual or family under a lease. (Property of this nature is also referred to as "HUD-owned property," "FmHA-owned property," or "VA-owned property" when the context requires identification of the particular agency.)

"FmHA" means the Farmers Home Administration, an agency within the U.S. Department of Agriculture.

"Homesteader" means an individual or family that participates in a local urban homesteading program by agreeing to rehabilitate and occupy a property in accordance with § 590.7(b)(5).

"HUD" means the U.S. Department of Housing and Urban Development.

"Local urban homesteading agency" (LUHA) means a State, a unit of general local government, or a public agency or qualified community organization designated in accordance with § 590.7(c) by a State or a unit of general local government.

"Local urban homesteading program" means the operating procedures and requirements developed by a LUHA in accordance with this part for selecting and conveying federally owned properties to qualified homesteaders.

"Lower income families" means those families and individuals whose adjusted incomes do not exceed 80 per centum of the median income for the area, as determined by the Secretary pursuant to section 3(b)(2) of the United States Housing Act of 1937. Pursuant to 24 CFR Part 813, the Secretary's income limits for this purpose are updated annually and are available from the Housing Management Division in HUD field offices.

"Qualified community organization" has the meaning specified in § 590.7(c)(4).

"Section 810 funds" means funds available to reimburse HUD, FmHA, or VA (as applicable) for federally owned property transferred to LUHAs in accordance with this part.

"State" means any State of the United States, any instrumentality of a State approved by the Governor, and the Commonwealth of Puerto Rico.

"Unit of general local government" means any city, county, town, township, parish, village, or other general purpose political subdivision of a State, Guam, the Virgin Islands, or American Samoa, or any general purpose political subdivision thereof; the District of Columbia; the Trust Territory of the Pacific Islands; and Indian tribes, bands, groups, and nations of the United States, including Alaska Indians, Aleuts, and Eskimos.

"Urban homesteading neighborhood" means any geographic area approved by HUD for the conduct of a local urban homesteading program that meets the requirement of this part.

"VA" means the Veterans Administration.

§ 590.7 Program requirements.

(a) *Designation of urban homesteading neighborhood; coordinated approach toward neighborhood improvement.* The applicant shall designate the neighborhood or neighborhoods in which it will carry out its local urban homesteading programs, and it shall develop a plan that provides for the improvement of these neighborhoods through the homesteading program and the upgrading of community services and facilities, and through other measures needed to assure a suitable living environment, in combination with any other public or private revitalization efforts affecting the neighborhood. In general, the applicant should select neighborhoods so that it can reasonably anticipate homesteading a minimum of five (5) properties per year for the LUHA's overall program during its first full year of operation and each program year thereafter.

(b) *Development of local urban homesteading program.* The applicant shall develop, in compliance with this part, a local urban homesteading program containing the following major elements:

(1) *Selection and management of properties.* The program shall include procedures for selecting federally owned properties suitable for homesteading and for managing the properties before conditional conveyance to homesteaders. The program shall also provide that, by accepting title to a property under this part, the LUHA assumes liability for injury or damage to persons or property by reason of a defect in the dwelling, its equipment or appurtenances, or for any other reason related to ownership of the property.

(2) *Homesteader selection.* The program shall include equitable procedures for homesteader selection which:

(i) Exclude prospective homesteaders who own other residential property;

(ii) Take into account a prospective homesteader's capacity to make or cause to be made the repairs and improvements required under the homesteader agreement, including the capacity to contribute a substantial amount of labor to the rehabilitation process, or to obtain assistance from private sources; community organizations, or other sources;

(iii) Provide that membership in, or other ties to, any private organization (including a qualified community organization) may not be made a factor affecting selection as a homesteader;

(iv) Provide that, before a property is offered to other prospective homesteaders who are eligible, the property will be offered to eligible lower income families; and

(v) Include other reasonable selection criteria which are consistent with this § 590.7(b)(2) and which shall be specified in the applicant's application pursuant to § 590.11(a) and approved by HUD pursuant to § 590.13. Such other selection criteria shall include locally-adopted criteria reasonably matching family size to the number of bedrooms. Such criteria shall not permit homesteaders who are one-person households to occupy a property having more than two bedrooms. In addition, selection criteria may include preferences for the selection of neighborhood residents or other local residents, but only to the extent that they are not inconsistent with this section and with affirmative marketing objectives under § 590.11(d)(5)(ii). Such preferences based on residential location may not be based upon the length of time the prospective homesteader has resided in the jurisdiction or the neighborhood. Also, persons who are employed, or who have been notified that they have been hired, in the jurisdiction shall be extended any preference available to current residents.

(3) *Conditional conveyance.* The program shall provide for the conditional conveyance of federally owned properties to homesteaders without any substantial consideration.

(4) *Financing.* The program shall provide procedures for the LUHA to undertake, or to assist the homesteader in arranging, financing for the rehabilitation required under the homesteader agreement. Where direct Federal loans under Section 312 of the Housing Act of 1964 (42 U.S.C. 1452b) are used as a rehabilitation financing resource by the LUHA, the LUHA shall make reasonable efforts to assist HUD in monitoring and securing compliance with the terms of the loan during the homesteader's conditional title period.

(5) *Homesteader Agreement.* The program shall provide for the execution, concurrent with or as a part of the conditional conveyance, of a homesteader agreement between the LUHA and the homesteader which shall require the homesteader:

(i) To repair, within one year from the date of conditional conveyance of the property to the homesteader, any defects that pose a substantial danger to health and safety;

(ii) To make or cause to be made additional repairs and improvements necessary to meet the applicable local standards for decent, safe, and sanitary housing within three years from the date of conditional conveyance of the property to the homesteader, and to comply with any energy conservation measures designated by the LUHA as part of the repairs;

(iii) To occupy the property as his or her principal residence for not less than five consecutive years from the date of initial occupancy except as otherwise approved in writing by HUD on a case-by-case basis when emergency conditions make compliance with this requirement infeasible;

(iv) To permit reasonable inspections at reasonable times by employees or designated agents of the LUHA to determine compliance with the agreement; and

(v) To surrender possession of, and any interest in, the property upon material breach of the homesteader agreement (including default on any rehabilitation financing secured by the property), as determined by the LUHA in accordance with this part.

(6) *Monitoring and selecting successor homesteaders.* The program shall provide that the LUHA will monitor the homesteader's compliance with the homesteader agreement, will revoke the conditional conveyance and homesteader agreement upon any material breach by the homesteader, and, to the extent necessary and practicable, will select one or more successor homesteaders for the property. The LUHA shall make reasonable efforts to assure that any proposed successor homesteader assumes any Section 312 loan on the property, subject to HUD approval of the terms of the assumption. If the LUHA selects a successor homesteader, it shall execute a new homesteader agreement and conditional conveyance with the successor homesteader in compliance with this part, including the requirement for occupancy of the property by the successor homesteader for at least five consecutive years, except that HUD may approve a lesser occupancy period where necessary to facilitate assumption of a Federal rehabilitation loan under Section 312 of the Housing Act of 1964 (42 U.S.C. 1452b) or any other public or private financing if the circumstances warrant such a reduction of the residency period and the LUHA requests it. Such period will not be less than the greater of: (i) Two additional years, or (ii) the remaining amount of the original occupancy period.

(7) *Fee simple title.* The program shall provide for the conveyance of fee simple title to the property from the LUHA to the homesteader, or successor homesteader, without financial consideration upon compliance with the terms of the homesteader agreement and conditional conveyance.

(8) *Homesteading infeasible; alternative use.* If completion of homesteading proves, in the judgment of HUD, to be infeasible for any reason after a LUHA has accepted title to a federally owned property, the LUHA shall not demolish, dispose of, rent or otherwise convert the property to its own use until HUD approves an alternative use consistent with the coordinated approach to neighborhood improvement.

(c) *Designation of LUHA*—(1) *Responsibilities.* Pursuant to this § 590.7(c), the applicant shall designate a LUHA, which shall have primary responsibility for administering the local urban homesteading program for the applicant. The LUHA shall be the legal entity that accepts title in its own name to federally owned properties conveyed by the applicable federal agency with reimbursement from section 810 funds and which conveys title to such properties to homesteaders pursuant to paragraph (b) of this section 590. Although the applicant may at any time amend its local urban homesteading program to designate a new LUHA, subject to HUD approval as described in §§ 590.13–590.15 of this part, neither the applicant nor the designated LUHA may delegate or contract out to another legal entity the function of accepting and conveying in its own name title to properties for homesteading purposes pursuant to this part. To the extent permitted by the applicant, the LUHA may use third parties as contractors, consultants, or agents to assist it in carrying out other functions and responsibilities with respect to the local urban homesteading program, by entering into a written agreement between the LUHA and the third party. No such agreement shall be deemed to relieve the LUHA or the applicant of responsibility for the third party's actions in connection with the local urban homesteading program.

(2) *Identity of LUHA.* The LUHA must have legal authority to carry out a local urban homesteading program as described in this part, including the authority to accept and convey title to properties pursuant to paragraph (b) of this § 590.7. To the extent consistent therewith, the applicant State or unit of general local government may:

(i) Act as LUHA in its own name, while identifying within its administrative organization a lead department or agency to act as the primary contact point for HUD, VA and FmHA as described in § 590.11(a)(7);

(ii) Designate, and enter into a written agreement with, a legally separate public body or agency to act as LUHA in accordance with this part; or

(iii) Designate, and enter into a written agreement with, a qualified community organization (as defined in paragraph (4) of this § 590.7(c)) to act as LUHA in accordance with this part.

(3) *Content of Agreement With Designated Public Agency or Qualified Community Organization.* The applicant's written agreement with its designated public agency or qualified community organization shall contain at least the following provisions, and nothing inconsistent therewith:

(i) The agreement of the LUHA to carry out the local urban homesteading program, including the acceptance and conveyance of title to properties for homesteading purposes, in accordance with the Act, this part, and the applicant's HUD-approved urban homesteading application;

(ii) The agreement of the LUHA to hold title (and the right of reverter or other interest retained after conveyance of conditional title to a homesteader) to formerly federally owned properties conveyed to it pursuant to this part in trust, solely for the purpose of conveying such title to homesteaders (or for such alternative use as may be approved by HUD) pursuant to this part, and not to convey, encumber or otherwise deal with such property for its own benefit or account;

(iii) The agreement of the LUHA promptly to convey title and other interests in properties held pursuant to this part to the applicant, or to such new LUHA as may be designated by the applicant and approved by HUD, if the applicant terminates the LUHA's designation; and

(iv) The agreement of the applicant and the LUHA that the LUHA's designation shall not relieve the applicant of full responsibility to HUD for the conduct of the local urban homesteading program, and that HUD may take any corrective or remedial action pursuant to this part against the applicant, the LUHA, or both, solely at HUD's option.

(4) *Definition of Qualified Community Organization.* As used in this part, the term "qualified community

organization" means a private non-profit corporation which is:

(i) Incorporated under applicable State or local enabling legislation and which has the authority necessary to carry out the program;

(ii) Controlled by a board of directors whose members receive no compensation of any kind for the performance of their duties; and

(iii) Is organized exclusively for charitable, educational, or scientific purposes, or the promotion of social welfare, and qualifies as an exempt organization under paragraph (3) or (4) of section 501(c) of the Internal Revenue Code of 1986.

§ 590.9 Listing of HUD-owned, VA-owned, and FmHA-owned properties.

In order to facilitate planning for local urban homesteading programs, HUD, FmHA, and VA, upon request by a LUHA, each shall provide the LUHA with a listing of all residential one- to four-unit properties in the LUHA's jurisdiction to which they hold title and which are not subject to executed repair or sale contracts or leases. The LUHA shall give the public access to the list during ordinary business hours at the offices of LUHA.

§ 590.11 Applications.

(a) *Initial application requirements.* Applicants may submit an initial application under this part to the responsible HUD Field Office at any time during the year. Applications shall consist of:

(1) Standard Form-424;

(2) A map of each proposed urban homesteading neighborhood with geographic boundaries indicated and census tracts shown;

(3) A statement of the local goals for the homesteading program for each neighborhood selection;

(4) A description of the applicant's proposed homesteader selection procedures which complies with § 590.7(b)(2);

(5) The applicant's proposed legal documents which read together comply with § 590.7(b) (3), (5), and (7);

(6) An estimate of the amount of section 810 funds to be used during the current Federal fiscal year and a statement concerning the basis for the estimate, including the number of properties expected to be acquired during the year, prepared after consultation with HUD/FHA, FmHA or VA as appropriate;

(7) The applicant's written agreement designating its LUHA which complies with § 590.7(c), or, if the applicant proposes to act as its own LUHA, identification of the lead agency primarily responsible for administration for the program;

(8) The certifications required by paragraph (d) of this section; and

(9) Any additional documentation HUD specifically requests after review of the initial application pursuant to § 590.13.

(b) *Annual Request for Program Participation.* An applicant that has previously submitted and received approval of an initial application under paragraph (a) of this section shall notify the HUD Field Office in writing on or before August 1 of each succeeding Federal fiscal year if it wishes to continue in the program. At the same time, the applicant shall notify HUD of its estimate of the section 810 funds to be used during the upcoming Federal fiscal year, along with an explanation of the basis for the estimate, including the number of properties expected to be acquired during the year, prepared after consultation with HUD/FHA, FmHA or VA as appropriate. Previous applicants with already approved applications will be required to submit the items described in paragraphs (4), (5), (7), (8), and (9) of § 590.11(a) with their annual request for program participation for the first Federal fiscal year following the effective date of this regulation. Except for those items, HUD will deem the initial application still in effect as it was finally approved, unless the applicant concurrently submits other amendments under paragraph (c) of this section.

(c) *Amendments.* If the applicant wishes to change any element of its local urban homesteading program that is specifically described in the HUD-approved application (such as the identification of urban homesteading neighborhoods or the designation of the LUHA to carry out the program), the applicant shall submit its proposal to the HUD Field Office for approval before making any such change. The proposal shall identify specifically the elements to be changed, and shall set forth the proposed amendment. Proposed amendments may be submitted with an annual request for program participation or at any other time during the program year.

(d) *Certifications.* As part of its application, the applicant shall certify that:

(1) Except for States, the applicant's governing body had duly adopted or passed an official act, resolution, motion, or similar action authorizing the filing of the application, including all understandings and assurances contained in these certifications.

(2) The LUHA possesses the legal authority to and will carry out the local urban homesteading program described in its approved application in accordance with this part, including the specific program requirements described in § 590.7(b).

(3) The LUHA has:

(i) An adequate administrative organization capable of carrying out the program in a timely and cost effective manner;

(ii) Procedures for selecting and accepting property suitable for homesteading and rehabilitation as required by § 590.7(b)(1);

(iii) Procedures to assist in arranging, or for itself to undertake, rehabilitation financing for property conveyed to homesteaders, as required by § 590.7(b)(4).

(iv) Procedures for monitoring the homesteader agreement and for revoking a conditional conveyance upon material breach of the agreement, and for selecting a successor homesteader as required by § 590.7(b)(6); and

(v) Procedures for conveying fee simple title to the residential property received from HUD, FmHA or VA without substantial consideration to the homesteader upon his or her full compliance with the agreement required in § 590.7(b)(7).

(4) The applicant or the LUHA has, before submission of the application:

(i) Developed a plan for a coordinated approach toward neighborhood improvement as required by § 590.7(a); and

(ii) Provided citizens an adequate opportunity to express preferences about the proposed location of the urban homesteading neighborhood or neighborhoods, and to comment on the plan for a coordinated approach toward neighborhood improvement.

(5) The applicant and LUHA will:

(i) Assure non-discrimination in the selection of homesteaders and that no eligible person is denied equal opportunity for housing, or excluded from equal participation in the homestead program, on the basis of race, creed, color, national origin, age, sex or handicapping condition and that it will comply with all requirements of Title VI of the Civil Rights Act of 1964; Executive Order 11063; Title VIII of the Civil Rights Act of 1973; the Age Discrimination Act of 1975, and all applicable regulations issued under these authorities, in any activity in its local urban homestead program; and

(ii) Employ affirmative marketing procedures in the advertising of homesteading properties.

(6) The LUHA will comply with the lead-based paint procedures set forth in 24 CFR Part 35.

(7) The LUHA will submit any information HUD requests for the purpose of meeting HUD's responsibilities under the National Environmental Policy Act of 1969; Executive Order 11988 on Flood Plain Management; Executive Order 11990 on Protection of Wetlands; the Flood Disaster Protection Act of 1973; the National Historic Preservation Act of 1966; and the Preservation of Historic and Archaeological Data Act of 1974, including the procedures prescribed by the Advisory Council on Historic Preservation in 36 CFR Part 800, and Executive Order 11593 on Protection and Enhancement of the Cultural Environment.

(8) The applicant and its designated LUHA will give HUD and the Comptroller General, through their authorized representatives, access to and the right to examine all records, books, papers, or documents related to the local urban homesteading program. The applicant and its designated LUHA will maintain current and accurate data on the race and ethnicity of program participants/beneficiaries, in order to enable HUD to meet the requirements imposed upon it by "Section 562 of the Housing and Community Development Act of 1987."

(9) The LUHA will maintain in writing and on file a description of its approved local urban homesteading program for public information and review.

§ 590.13 Standards for HUD review and approval of a local urban homesteading program.

(a) *Applications.* The appropriate HUD Field Office will review an applicant's initial application and the Field Office Manager will approve the proposed local urban homesteading program, unless the Field Office Manager determines that the program does not comply with the Act, this part or other applicable laws and regulations, or that it is plainly inappropriate or plainly inconsistent with available facts and data. If the program is disapproved, HUD shall notify the applicant in writing of the specific reasons.

(b) *Annual requests for program participation and program amendments.* The HUD Field Office will review any proposed application amendments and an applicant's annual request for program participation and will approve the applicant's submission unless the Field Office Manager determines that the proposal does not comply with the Act, this part, or other applicable laws and regulations, is plainly inappropriate or plainly inconsistent with available facts and data, or that the applicant's past performance does not meet the standards of § 590.29(a). HUD will notify the LUHA in writing of the specific reasons for any disapproval. Program amendments will be considered approved as of the date of HUD's written notification of approval to the applicant. Annual requests for program participation will be considered approved as of the date of HUD's written notification to the applicant of approval, or notice of satisfaction of any approval conditions, whichever is later.

§ 590.15 Urban homesteading program participation agreement.

Upon approval of an application, HUD, the State or unit of general local government and the designated LUHA, if any, will execute an urban homesteading program participation agreement in the form prescribed by HUD. The agreement authorizes the LUHA to request HUD, VA, and FmHA to transfer properties to the LUHA pursuant to this part, to the extent that funds available are sufficient to reimburse the Federal agency for the properties. The agreement also obligates the LUHA to use the properties in accordance with the Act, this part, other applicable laws and regulations, and its approved application. However, neither a fund reservation nor the agreement obligates HUD, FmHA or VA to transfer a specific number of properties or particular properties identified in a program application, or a program amendment. The agreement shall specify procedures for its amendment or termination.

§ 590.17 Transfer of HUD-owned property.

(a) *Property disposition assistance.* HUD's property disposition activity shall support local urban homesteading programs as follows:

(1) After execution of its initial urban homesteading agreement, but before the initial selection of any HUD-owned property, a LUHA may request HUD to suspend its routine property disposition activity for up to 45 days for HUD-owned properties listed under § 590.9 and identified by the LUHA as located in a HUD-approved urban homesteading neighborhood. Based upon this request, HUD shall state in writing the starting and closing dates of the suspension of property disposition activity for all such identified HUD-owned properties.

(2) With respect to properties coming into HUD's inventory later, the HUD Field Offices shall develop and implement property disposition plans for HUD-owned properties located in HUD-approved urban homesteading neighborhoods. These plans shall include the following procedures:

(i) As soon as feasible, but in no event later than ten days after HUD receives a notice of property transfer and application for insurance benefits for a HUD-owned property located in a HUD-approved urban homesteading neighborhood, the HUD Field Office shall notify the LUHA in writing of the potential availability of the property for homesteading.

(ii) The HUD Field Office shall not approve a property disposition program for a HUD-owned property until the LUHA has informed the Field Office, in writing, whether or not it intends to use the property in the local urban homesteading program, or until 21 days from the date of HUD's notice, whichever comes first. The Field Office Manager may extend the 21-day deadline if the Field Office Manager makes a written determination that notification by the LUHA within 21 days is impracticable.

(b) *Conditions for transferring HUD-owned properties.* Except as provided in paragraph (c) of this section, HUD shall offer to transfer the title of a HUD-owned property to a LUHA, without payment, if:

(1) The property is located in a HUD-approved urban homesteading neighborhood;

(2) The LUHA has notified the HUD Field Office, within the applicable period specified in paragraph (a)(1) or (a)(2)(ii) of this section, that it intends to use the property in the local homesteading program;

(3) The LUHA's approved reservation of section 810 funds is sufficient to reimburse HUD's applicable housing loan or mortgage insurance accounts for the estimated as-is fair market value of the property, or a negotiated lesser amount, plus closing costs as approved by HUD; and

(4) The HUD Field Office determines that the requested property is suitable for the approved local urban homesteading program, as follows:

(i) The estimated as-is fair market value of the property does not exceed $25,000 (excluding closing costs) for a one-unit single family residence and an additional $8,000 for each additional unit of two- to four-family residences; or

(ii) The Field Office Manager authorizes, on a property-by-property basis, the transfer of a HUD-owned property where the estimated fair market value exceeds the preceding limitations if the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and

delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of property, warrant the additional cost to the Federal government.

(c) *Exceptions.* (1) If a LUHA fails to accept title within 30 days of HUD's offer of a property for a specific price in accordance with paragraphs (b) (1)–(4) of this section, HUD may approve an alternative disposition plan for the property. The HUD Field Office Manager may exend, for a reasonable period of time, this 30-day deadline if the HUD Field Office Manager makes a written determination that acceptance of title by the LUHA within 30 days of property selection is impracticable.

(2) A property otherwise eligible for transfer to an LUHA may be used to meet higher priority needs if the Field Office Manager makes a determination in writing that the property is essential to meet an existing legal obligation such as:

(i) Settlement of a sales warranty claim;

(ii) Settlement of a claim under section 518 of the National Housing Act for critical structural defects in certain one- to four-family dwellings;

(iii) Emergency housing needs (disaster housing and urgent public housing needs such as providing shelter for the homeless);

(iv) Reconveyance for noncompliance with 24 CFR 203.363;

(v) Reconveyance pursuant to a Civil Frauds Act settlement;

(vi) Reconveyance where the mortgage was never insured; and

(vii) Other legal obligations as determined by HUD.

§ 590.18 Reimbursement to FmHA and VA.

The Secretary shall reimburse FmHA or VA from a LUHA's section 810 funds in an amount agreed to between the LUHA and FmHA or VA for FmHA- or VA-owned property plus approved closing costs, under the following conditions:

(a) The property is located in a HUD-approved urban homesteading neighborhood;

(b) The LUHA's approved reservation of section 810 funds is sufficient to support the agreed reimbursement, including closing costs;

(c) The reimbursement (excluding closing costs) does not exceed the lesser of the amounts specified in paragraphs (c) (1) or (2) of this section.

(1)(i) $25,000 for a one-unit single family residence, plus $8,000 for each additional unit of of a two- to four-family residence; or

(ii) An amount greater than the amount in paragraph (c)(1)(i), of this section, if authorized by the HUD Field Office Manager on a property-by-property basis, where the benefit to the community expected from the expedited occupancy of the property, and the expected reduction of difficulties and delays (such as vandalism to the property) that HUD typically encounters in the disposition and sale of similar property, warrant the additional cost to the Federal government; or

(2) The amount certified by FmHA or VA to be a fair value for the property based on the lesser of the market value or the amount of FmHA's or VA's claim plus the expenses connected with Federal ownership; and

(d) The property has been conveyed to a LUHA for use in a HUD-approved local urban homesteading program.

§ 590.19 Use of section 810 funds.

Section 810 funds may be used to reimburse HUD, VA or FmHA for federally owned properties. Section 810 funds may not be used to reimburse LUHAs for administrative costs, nor may they be used to acquire property other than through reimbursement for federally owned property.

§ 590.21 Reservation and reduction of funds.

After execution of the applicant's urban homesteading program participation agreement during the first program year, and thereafter following approval of the applicant's annual request for program participation, HUD will reserve funds to reimburse the FHA, FmHA, and VA when specific properties are identified for transfer to the LUHA. Funds will be reserved on a first-come, first-served basis subject to available fund limitations. At any time during a fiscal year, HUD may decline making funds available when in HUD's judgment the LUHA's performance does not meet the standards set out in § 590.29(a) or when there are an insufficient number of affordable, federally owned properties available due to market conditions in the area, to warrant continuation in accordance with § 590.7(a) and § 590.13.

§ 590.23 Program close-out.

(a) *Initiation of close-out.* This section prescribes procedures for program close-out when continuing a program is no longer feasible or where the beneficial results are not commensurate with the further expenditure of section 810 funds in a locality's designated urban homesteading neighborhoods. The LUHA will institute close-out procedures, in accordance with HUD instructions, when one or more of the following occurs:

(1) The LUHA determines that it does not have the capacity to continue administering the program in a timely and cost-effective manner;

(2) HUD terminates the LUHA's program because the LUHA's performance does not meet the standards specified in § 590.29(a); or

(3) HUD terminates the LUHA's program because the LUHA did not acquire any federally owned properties in the previous two Federal fiscal years and because local market conditions demonstrate that an insufficient number of affordable, federally owned properties is likely to be available for the next Federal fiscal year.

(b) Close-out may be subject to later audit in accordance with § 590.27(b).

(c) *Close-Out Conditions.* Upon completion of HUD close-out review, HUD will send the LUHA a letter of completion, which HUD may condition. Conditions may reflect unmet obligations, deadlines to meet them, and a statement of any required interim reporting procedures. In addition to any other conditions that may be specifically set forth in the letter of completion, the LUHA remains responsible after close-out to take whatever actions may be necessary to enforce the homesteader agreement and complete final fee simple conveyance to the homsteader or a successor homesteader, or to obtain alternative use approval from HUD under § 590.7(b)(8), for properties conveyed to the LUHA for homesteading prior to close-out.

(d) *Monitoring of closed-out programs.* HUD shall monitor closed out programs to determine compliance with any conditions imposed under paragraph (c), the certifications under § 590.11(d), the Act, this part and other applicable Federal laws and regulations until the LUHA transfers fee simple title to all federally owned properties to the homesteader, or until HUD approves an alternative use and the LUHA implements it under § 590.7(c).

§ 590.25 Retention of records.

The LUHA shall maintain adequate financial records, property disposition documents, supporting documents, statistical records, and all other records pertinent to the local urban homesteading program until the period for HUD monitoring under § 590.23(d) has expired.

§ 590.27 Audit.

(a) *Access to records.* The Secretary, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to all books, accounts, records, reports, files,

and other papers or property of LUHAs pertaining to funds or property transferred under this part, for the purpose of making surveys, audits, examinations, excerpts, and transcripts.

(b) *Audit.* The LUHA's financial management system shall provide for audits in accordance with 24 CFR Part 44.

§ 590.29 HUD review of LUHA performance.

(a) HUD shall review the performance of each LUHA that has a homesteading agreement and section 810 fund reservation at least once each Federal fiscal year to determine whether:

(1) The program complies with the urban homesteading program participation agreement and certifications, the Act, this part, and other applicable Federal laws and regulations;

(2) The LUHA is carrying out its program substantially as approved by HUD;

(3) The federally-owned properties the LUHA selects are suitable for homesteading and rehabilitation;

(4) The LUHA is making reasonable progress in moving properties through the stages of the homesteading process, including acquisition, homesteader selection, conditional conveyance, rehabilitation, and final conveyance, and is not making an unreasonable number of requests for extension of the time periods specified in § 590.17(a)(2)(ii) and (c)(1);

(5) The improvements in neighborhood public facilities and services provided for in the coordinated approach toward neighborhood improvement are occurring on a timely basis; and

(6) The LUHA has a continuing administrative and legal capacity to carry out the approved program in a cost-effective and timely manner.

(b) In reviewing a LUHA's performance, HUD will consider all available evidence, which may include, but need not be limited to, the following:

(1) Records maintained by the LUHA;

(2) Results of HUD's monitoring of the LUHA's performance;

(3) Audit reports, whether conducted by the LUHA or by HUD auditors;

(4) Records of comments and complaints by citizens and organizations; and

(5) Litigation history.

(c) LUHAs shall supply data and make available records necessary for HUD's annual evaluation of the LUHA's local urban homesteading program.

§ 590.31 Corrective and remedial actions.

When HUD determines on the basis of its review that the LUHA's performance does not meet the standards specified in § 590.29(a), HUD shall take one or more of the following corrective or remedial actions, as appropriate in the circumstances:

(a) Issue a letter of warning that advises the LUHA of the deficiency and puts it on notice that HUD will take more serious corrective and remedial action if the LUHA does not correct the deficiency, or if it is repeated;

(b) Advise the LUHA to suspend, discontinue or not incur costs for identified defective aspects of the local program;

(c) Condition the approval of the annual request for program participation if there is substantial evidence of a lack of progress, noncompliance, or a lack of continuing capacity. In such cases, HUD shall specify the reasons for the conditional approval and the actions necessary or remove the conditions;

(d) In cases of continued substantial noncompliance, terminate the urban homesteading program participation agreement, close out the program and advise the LUHA of the reasons for such action; or

(e) Where HUD determines that a LUHA has, contrary to its obligations under § 590.7(b), converted a property received under this part to its own use, failed to adequately preserve and protect the property, or received excessive consideration for its conveyance, HUD may direct the LUHA to repay to HUD either the amount of compensation HUD finds that the LUHA has received for the property or the amount of section 810 funds expended for the property, as HUD determines appropriate.

Dated: September 21, 1988.

Jack R. Stokvis,

Assistant Secretary for Community Planning and Development.

[FR Doc. 88-24003 Filed 10-18-88; 8:45 am]

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Wednesday
October 19, 1988

Part III

Department of Housing and Urban Development

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 900, 904, 905, 912, and 960

Restriction on Use of Assisted Housing by Aliens; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 900, 904, 905, 912, and 960

[Docket No. R-88-1409; FR-2383]

Restriction of Use on Assisted Housing by Aliens

AGENCY: Office of the Secretary, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would implement section 214 of the Housing and Community Development Act of 1980, as amended by section 329(a) of the Housing and Community Development Amendments of 1981, by section 121(a)(2) of the Immigration Reform and Control Act of 1986 (IRCA), and by section 164 of the Housing and Community Development Act of 1987 (1987 Housing Act), Pub. L. 100-242, approved February 5, 1988. Section 214 prohibits the Secretary from making financial assistance available on behalf of persons other than United States citizens, nationals, or certain categories of eligible aliens in the public housing and Indian housing programs (including homeownership), the Section 8 housing assistance payments programs (including Housing Voucher and Housing Development Grants), the Section 236 interest reduction and rental assistance programs, the Rent Supplement program, and the Section 235 homeownership program.

DATE: Comments must be received by December 19, 1988.

ADDRESS: Interested persons are invited to submit comments regarding this rule to the Rules Docket Clerk, Office of the General Counsel, Room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: For public housing and Indian housing—Edward Whipple Rental and Occupancy Branch, Office of Public Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-5000, telephone (202) 426-0744; for the Section 8 Existing Housing and Moderate Rehabilitation Programs—Madeline Hastings, Office of Elderly and Assisted Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-6887; for the other Section 8 programs and the Section 236 programs—James J. Tahash, Program Planning Division, Office of Multifamily Management, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 426-3944; and for the Section 235 homeownership program—William Heyman, Office of Lender Activities and Land Sales Registration, Office of Single Family Housing, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410-8000, telephone (202) 755-6924. A telecommunications device for deaf persons (TDD) is available at (202) 472-6725. (These are not toll-free telephone numbers.).

SUPPLEMENTARY INFORMATION:

Paperwork Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 and have been assigned OMB control numbers 2502-0356 and 2577-0093. Public reporting burden for these collections of information, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information, is estimated as stated in a chart found in the section of this preamble entitled *Findings and Certifications*. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, at the address stated above, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, Attention: Desk Officer for HUD.

I. Background of Rule

Although the restriction against providing housing assistance to ineligible aliens has been embodied in a statute since 1980, there have been numerous statutory revisions and attempts by HUD to implement the statute by regulation. The most recently published discussion of this topic, 53 FR 842 (January 13, 1988), can be consulted for a detailed history of the alien restrictions. While a final alien rule was published on April 1, 1986 (51 FR 11198), it was never made effective. Until a final rule is published and made effective, there are no HUD restrictions against the use of assisted housing by aliens. Consequently, until this proposed rule has reached the final rule stage, managers of HUD-assisted housing are not authorized to take any action based on the citizenship or alien status of applicants and tenants.

Section 214(g) authorizes the Secretary to reimburse public housing agencies, project owners, and mortgagees (in the Section 235 FHA insurance program) for the costs incurred in implementing and operating the system of verifying immigration status. Although this topic is not specifically addressed in this rule, the Department expects to develop a method of coordinating with the United States Immigration and Naturalization Service, which operates a system for verifying immigration status called the Systematic Alien Verification for Entitlements (SAVE) system—which includes an automated system and a manual search capability. The Department anticipates that the cost of necessary verification inquiries made on the automated system will be billed directly to HUD.

II. Purpose of This Rule

The purpose of this rule is to set forth the responsibilities of assisted housing managers (and mortgagees, in the case of the Section 235 program) and applicants and tenants (and mortgagors) with respect to the requirements for submission and verification of evidence of citizenship or eligible immigration status in connection with receipt of financial assistance in the housing programs described briefly above. The previous final rule, which was published on April 1, 1986 but never made effective, was similar in its organization to this rule. However, the statute has been amended twice (by IRCA and the 1987 Housing Act) since that rule's publication, so among the differences between the two rules are the method of dealing with the subject of document verification; the requirement that evidence be provided for every member of the household (including children under the age of 18); the addition of a newly legalized alien category as a group eligible for housing assistance; and the provision of certain procedural safeguards associated with determinations of eligible immigration status.

III. Program Covered

Paragraph (b) of section 214 states that its restrictions concerning aliens apply to the provision of "financial

assistance made available pursuant to the United States Housing Act of 1937, section 235 or 236 of the National Housing Act, or section 101 of the Housing and Urban Development Act of 1965." (42 U.S.C. 1436a) This list effectively includes all of HUD's assisted housing programs except for the Section 221 (d)(3) and (d)(5) program of interest subsidy for projects with mortgages insured under those sections of the National Housing Act (12 U.S.C. 1715*l*). Also excepted from the alien restrictions are those tenants who pay market rent under the Section 326, Rental Rehabilitation and Housing Development Grant programs; since they are not receiving the benefit of any Federal financial assistance. (It should be noted, however, that a market rent tenant would be required to submit evidence of citizenship or eligible immigration status if he or she subsequently applied for a tenant-based subsidy.) Mortgagors under the Section 235 mortgage insurance and assistance payments program are covered if assistance payments are provided, although the restrictions are being applied to current mortgagors only if the terms of their existing contracts are modified for some other reason. Similarly, these restrictions against financial assistance to aliens with ineligible immigration status are to be applied to current homebuyers under the Turnkey III and Mutual Help programs only to the extent that applying the restrictions would be consistent with existing contracts. All homeownership contracts or Section 235 purchases executed after the effective date of the final rule will be covered by the restrictions.

The last rule published on this subject did not cover either of the programs authorized under section 17 of the 1937 Act (Rental Rehabilitation program—Part 511, or the Housing Development Grant program—Part 850), because it was a final rule based on prior rules that predated the enactment of section 17. As a proposed rule, this rule must address the applicability of the prohibition of section 214 of the HCD Act of 1980, as amended, on providing financial assistance to aliens with ineligible immigration status to all programs now authorized under the 1937 Act. Under section 17 of the 1937 Act, financial assistance is provided for the rehabilitation of rental housing located in neighborhoods where rents are generally affordable to lower income families under the Rental Rehabilitation program, but there is no need to cover that program specifically under this rule, since any financial assistance provided to lower income families is provide via Section 8 Certificate or Housing Voucher, which are separately covered by the restrictions of section 214. However, the Housing Development Grant program does provide for financial assistance to some tenants during the first 20 years after initial occupancy of a project. Program regulations require that certain lower income units be leased only to lower income tenants and that those tenants be charged special rents, not to exceed prescribed limits. Therefore, this rule would cover those lower income tenants.

The other programs that provide financial assistance on behalf of tenants (or homebuyers) pursuant to the United States Housing Act of 1937 are the Public and Indian Housing programs, including the Mutual Help and Turnkey III Homeownership Opportunity programs; and the Section 8 Housing Assistance Payments programs, including New Construction, Substantial Rehabilitation, Certificate, Housing Voucher, State Housing Agency and Farmers Home Administered, Section 202 Housing for the Elderly or Handicapped projects (when Section 8 assistance is involved), and Loan Management and Property Disposition projects.

The program authorized under section 235 of the National Housing Act, 12 U.S.C. 1715z, provides for payments by HUD to the mortgagee on behalf of a lower income mortgagor to reduce the homebuyer's payments to an affordable level, *e.g.*, the higher of a certain percentage of income or the amount that would be payable if the interest charged on the mortgage loan were set at some figure such as four percent. This program is available to purchasers of single family homes, and units in cooperatives and condominiums. The rule will affect mainly new applicants for participation in the program. Assistance contracts of Section 235 homeowners who executed their contracts before the effective date of this rule will be honored without regard to their citizenship or immigration status. The rule will have an impact on current Section 235 homeowners themselves only if their mortgage is to be revised for some other reason, in which case the modification will include application of the restrictions on immigration status as if the mortgagor were an applicant for participation in the assistance program. Although there may be no new mortgages insured and assisted under this program, at conveyance of properties already insured and assisted under the program, purchasers will be required to demonstrate eligibility in order to be approved for assistance (and thereafter at each annual recertification, to continue to receive assistance).

The Section 236 program provides for payments to a mortgagee on behalf of the owner of a rental housing project designed for occupancy by lower income families in order to reduce the owner's payments to the amount that would be payable if the interest rate on the mortgage loan were set at a figure such as one percent. These lower mortgage payments enable the owner to charge qualified tenants lower than market rate rents ("basic rents"), although tenants who are not qualified for the benefits of the program may be charged market rate rents. In addition, rental assistance payments are available for some units in these projects to enable the rents charged to tenants who cannot afford the "basic rent" to be reduced to an amount based on a percentage of income, similar to the rents charged in the public housing and Section 8 programs. This rule applies to all the tenants of a Section 236 project who pay a less-than-market-rate rent.

The program authorized under section 101 of the Housing and Urban Development Act of 1965, 12 U.S.C. 1701s, is the Rent Supplement program. Under this program, HUD makes payments to a housing owner that is a private nonprofit entity or limited dividend entity and whose purchase of the property is financed by a mortgage loan insured under certain HUD programs, or is financed under a State or local program approved by HUD. These payments are for the benefit of lower income tenants to enable the owner to charge these tenants rents based on a percentage of their incomes, similar to the rents charged in the public housing and Section 8 programs.

Hypothetical Situations

To highlight operation of the alien restrictions under this proposed rule, a couple of hypothetical scenarios will be discussed. The steps outlined in these hypotheticals reflect actual requirements discussed later in the rule. the first hypothetical deals with an applicant, while the second addresses the slightly different procedures relating to tenants. Although applicable to any of the covered programs under this rule, the cases in point involve a Section 8 program:

1. Example for Applicant

Step 1: Documentation. An alien submits an application for assistance under the Section 8 New Construction

program (Part 880) and is notified by the project owner that the following evidence of eligible immigration status must be submitted: (1) A declaration stating that the alien is in an eligible immigration status (*i.e.*, that he or she falls within one of the six eligible categories of eligible aliens); (2) an original INS document establishing eligible immigration status; and (3) a signed verification consent form authorizing the owner to verify the alien's immigration status with the Immigration and Naturalization Service (INS). The project owner continues to process the applicant for purposes of establishing eligibility for assistance, without regard to immigration status, and places the applicant's name on the waiting list once income eligibility is established.

Step 2: Verification. Upon receiving the alien's INS document (an I–94), the project owner verifies the applicant's "A-number" with the INS through the use of an automated verification system by touch-tone telephone. The automated system is unable to locate the alien's "A-number" in its data base, and the project owner is told to "Institute secondary verification". This instruction means that the A-number needs to be manually checked by the INS. At this point, the project owner requests a secondary (manual) search of the INS alien records by forwarding photocopies of the alien's I–94 (front and back), together with Form G–845, to the designated INS field office for review. The applicant is not admitted to the Second 8 program until secondary verification establishes that the alien is in an eligible immigration status.

Step 3: Informal hearing. Secondary verification establishes that the alien is *not* in an eligible immigration status, and the owner notifies the applicant that the applicant's eligibility for financial assistance is denied, and the basis for the denial. The owner also informs the applicant that the applicant may: (1) Request an informal hearing within 14 days of the denial notice; (2) meet with a person designated by the owner; (3) be represented by an attorney (or anyone else designated by the applicant); and (4) present evidence of an INS determination of eligible immigration status. The applicant requests a hearing and meets with the owner's representative. Within five days of the hearing, the owner provides the applicant with a written final decision stating the basis for the decision.

2. Example for Tenant

Step 1: Documentation. A tenant already residing in a Section 8 project on the effective date of the final rule is notified by the project owner of the requirement to submit evidence of eligible immigration status at the same time that she is notified of the need to verify income. The tenant is neither a U.S. citizen nor 62 years of age. At the regular annual reexamination, the tenant submits the following documents: (1) A declaration stating that she is in an eligible immigration status; (2) original INS documents establishing eligible immigration status; and (3) a signed verification consent form authorizing the owner to verify the tenant's immigration status with the INS.

Step 2: Verification. The owner of the section 8 project verifies the tenant's immigration status with the INS in the same manner as discussed for applicants above.

Step 3: Informal hearing. Secondary verification establishes that the tenant (who is also the head of household) is *not* in an eligible immigration status, and the owner notifies that tenant of the determination and that assistance will be terminated unless the tenant requests an informal hearing within 14 days of the termination notice. The tenant makes a timely request and is given an opportunity to: (1) Meet with a person designated by the owner; (2) be represented by an attorney (or anyone else designated by the applicant); and (3) present evidence of an INS determination of eligible immigration status. Within five days of the hearing, the owner provides the tenant with a written final determination that the tenant does not have eligible immigration status, and the basis for the decision. Assistance is *not* terminated until the conclusion of the hearing process and after consideration is given to the tenant's eligibility for discretionary relief (as summarized in Step 4 and Part IV (I) below), since she was in occupancy receiving assistance of the effective date of the final rule.

Step 4: Preservation of families. The project owner now considers whether the tenant qualifies for discretionary relief under either the "mixed family" or "deferral of termination" provisions:

A. *Continuation of assistance.* The owner finds that: (1) The tenant was receiving HUD financial assistance on the effective date of the final rule; but that (2) the family does not qualify for indefinate continuation of assistance because neither the head of household nor the spouse has eligible immigration status. As a result, the project owner is unable to permit the family to continue receiving assistance under this section.

B. *Temporary deferral of termination.* The owner next considers whether termination of assistance must be deferred for a period of six months to permit the "orderly transition" of the ineligible individual and family members to other affordable housing. The family has demonstrated that it has been unable to find an appropriate size unit at an affordable rent, so the project owner grants the six-month deferral.

Step No. 5: Termination of assistance. Following the six-month deferral period, the owner determines that the family can afford to pay the unassisted rent for the unit. As a result, even though Federal housing assistance is terminated, the tenant may continue to reside in the Section 8 unit while paying an unassisted rent under a new or modified lease agreement.

IV. Organization of rule

A. General Provisions

In this proposed rule, as in the rule published on April 1, 1986 that never became effective, there are three main sources of the overall requirements concerning citizenship or eligible immigration status. For the Federal Housing Administration's insured housing programs covered by section 214, this source is Part 200, Subpart G. For the section 8 programs and the Housing Development Grant program, this source is Part 812. For public housing and Indian housing programs, including homeownership programs and leased housing assisted under section 10(c) or 23 of the United States Housing Act of 1937 as in effect before its amendment by the Housing and Community Development Act of 1974, this source is Part 912.

Provisions governing the selection of applicants and the procedures for denial of assistance are found both in the three primary parts (Parts 200, 812 and 912) and in the individual program parts.

The contents of Part 200, Subpart G, Part 812, and Part 912 are nearly the same. However, there are some differences in technology to reflect the differences in the parties involved. For example, Part 200 uses the term "project owner" for the entity responsible for administering the restriction on providing assistance to individuals with ineligible immigration status, while Part 812 uses the term "responsible entity", and Part 912 uses the term "PHA". "Project owner" is a defined term, used to mean both the entity that owns a housing project containing the assisted dwelling unit and—for economy of words—the mortgagee in the case of section 235 mortgage. (The overwhelming majority of entities administering the restrictions under Part 200 will in fact be project owners, as

that term is commonly understood, since no new section 235 mortgage insurance commitments are being made, and mortgagors under contracts executed before the effective date of the final rule will not be reached by most elements of the rule.) The term "responsible entity" is used in the section 8 programs because in many cases, such as in the Certificate and Housing Voucher programs, the entity is the PHA, while in many other cases, such as in the New Construction or Substantial Rehabilitation programs, the entity is the project owner. In the case of programs covered by Part 912, the entity is always the Public Housing Agency. Similarly, the terms used for the recipient of financial assistance vary. In Part 200, the term used is "tenant" although it is defined to include section 235 mortgagors. In Parts 812 and 912 the term used is "family". In each case, the term used refers to the person responsible to the owner or mortgagee for use of the property—the person who signs the lease or mortgage and assistance contract.

B. Program-Specific Provisions

1. Eligibility for Participation

Each program covered by this rule has at least one existing rule provision concerning eligibility requirements for financial assistance. These provisions deal with such subjects as the qualifying income level for applicants, the type of dwelling unit to be occupied, and the responsibility of the project owner or mortgagee to determine the eligibility of the applicant. Since section 214 of the Housing and Community Development Act of 1980 adds one more requirement to the list of eligibility standards, many of these rule sections are amended here to cross-reference the requirements of the general provisions on the subject of alien restrictions and to emphasize the project owner's role in assuring that applicants submit the necessary information and that the information be properly verified.

For the Rent Supplement program, § 215.25(a) would be amended to require an owner to follow the requirements of Part 200, Subpart G, on submission and verification of information related to citizenship and eligibility immigration status for purposes of establishing eligibility for admission. Similar provisions are contained at § 235.10(c) for the section 235 homeownership assistance program, and §§ 236.70(a)(1) and 236.715(a) for the section 236 interest reduction payments and rental assistance payments programs. In the section 8 housing assistance payments programs, the responsible entity is required to follow the alien submission and verification requirements contained at Part 812 and this reference is included at the sections dealing with the selection and admission of assisted tenants. In the case of the section 235 homeownership program, the differences from the rental programs require the addition of a section (§ 235.13) to detail the types of action to be taken by a mortgagee during the course of mortgage servicing, or at the time of conveyance of the mortgaged property.

The requirement that all family members have eligible status applies to all persons residing in a unit who are receiving the benefit of HUD financial assistance. The United States Housing Act of 1937 recognizes one type of person who may reside in an assisted dwelling unit without being considered to be receiving the benefit of the financial assistance. Section 3(b)(3) of that Act specifically authorizes the presence in an assisted household of "one or more persons determined under regulations of the Secretary to be essential to (the) care or well being" of an elderly, disabled, or handicapped individual. The regulations for most of the programs covered by the alien restriction contain a reference to this category of person, defined as a "live-in-aide." The income of such person is not included in the family's income for purposes of determining eligibility, since the live-in aide is not viewed as a program beneficiary. Similarly, in this rule the live-in aide is not identified as a program participant or family member who must satisfy the rule's requirements for citizenship or eligible immigration status, and such a person is not covered by this rule.

2. Denial of Assistance to Applicants

Under this proposed rule, the responsible entity is required to deny assistance to any applicant who is unable to establish eligible immigration status in accordance with the requirements of Part 200, 812 or 912 (as appropriate), and to provide an informal hearing following the denial of assistance.

In the Section 215 Rent Supplement program and the section 236 interest reduction payments program and related assistance programs, the owner is required to follow the provisions governing denial of financial assistance, including the informal hearing requirements established at § 200.186 (b) and (c). For the section 235 homeownership assistance program, these provisions are treated separately at § 235.13(e) (1) and (2).

In the section 8 housing assistance payments program, the general provisions governing denial of assistance to applicants (including the informal hearing requirements) are located at § 812.9 with specific cross references found in the individual section 8 programs regulations. In the Housing Development Grants program, the reference to denial of assistance is found at § 850.151(c).

For the section 8 programs administered by a PHA (i.e., Certificate, Housing Voucher and Moderate Rehabilitation), the Department will provide the informal hearing in accordance with the existing hearing procedures at § 882.216. This provision is proposed to be amended to provide that where denial of assistance is based upon a failure to establish citizenship or eligible immigration status, an applicant will have an opportunity to present evidence of citizenship (if required), or of an INS determination of eligible immigration status. In addition to the informal hearing procedure under § 882.216, the general denial of assistance provisions under § 812.9 would also apply.

General provisions relating to denial of assistance to applicants for public housing are located at § 912.9. The applicable informal hearing requirements are located at § 960.207. Although Part 960 doe snot generally apply to the Section 23 housing assistance payments program, the Turnkey III Homeownership program and the Indian housing program, administered under Parts 900, 904, and 905, respectively, the hearing requirements of Part 960 are made applicable in this rule with respect to denial of assistance based on the failure to demonstrate citizenship or eligible immigration status. (See the cross references located at § 900.202(d)(3), § 94.144(g)(2), and § 905.302(c).)

3. Termination of Assistance/Eviction

a. *Termination of Assistance.* The responsible entity is required to provide an informal hearing to any tenant who is unable to establish citizenship or eligible immigration status (as verified by the INS). If, following the informal hearing, the tenant is determined not to be in an eligible immigration status, financial assistance must be terminated in accordance with requirements of the lease or with HUD requirements.

The reference to termination of assistance based upon a failure to establish citizenship or eligible immigration status is located at § 215.55(c) for the rent supplement program, and at § 236.80(c) for the Section 236 interest reduction paymens and rental assistance payments

programs. In each of these programs, the owner is required to follow the termination of assistance provisions, including the informal hearing requirements, established at § 200.186(d). For the Section 235 homeownership program, these provisions are treated separately at § 235.13(f) of the proposed rule.

The Section 8 housing assistance payments programs treat the termination of assistance to tenants in the same manner as the denial of assistance to applicants. The general provisions relating to termination of assistance are located at § 812.9(d), with cross references contained in each of the individual program parts. These cross references are located at § 880.607(c)(4) (new construction); § 881.607(c)(4) (substantial rehabilitation); § 883.704(c)(3) and § 883.704(c)(4) (State housing agencies); § 884.216 (new construction set-aside); and §§ 886.128 and 886.328 (special allocations). In the Housing Development Grants program, termination of assistance is referenced at § 850.151(f)(3).

In the Section 8 program administered by a PHA (Certificate, Housing voucher, and Moderate Rehabilitation), the informal hearing requirements of § 882.216(b)(6) are applicable, in conjunction with the general termination of assistance provisions at § 812.9.

It shouild be noted that under the Housing Voucher program, the current reference to the informal hearing under § 882.216 is contained at Section (T) of the Notice of Fund Availability (NOFA) published on March 23, 1988. However, since the Department expects to codify the program requirements for the House Voucher program, the informal hearing procedures will then be contained at § 887.405 of the final rule. This section will contain the hearing procedures for both denial and termination of assistance. Necessary amendments will be made to § 887.405 to reference the ability of an applicant or family to obtain a hearing to establish citizenship or eligible immigration status.

General provisions relating to termination of assistance in public housing are located at § 912.9. The informal hearing is provided in accordance with the requirements of Part 966. Although Part 966 generally does not apply to the Section 23 housing assistance payments program (Part 900), the Turnkey III homeownership program (Part 904), or Indian housing (Part 905), the hearing requirements of Part 966 are made applicable under this rule to termination of assistance based on the failure to establish citizenship or eligible immigration status. For homebuyer agreements under Parts904 and 905, termination of assistance for failure to establish citizenship or eligible immigration status would result in termination of the homebuyer agreement and conversion to rental status.

b. *Eviction.* One method of terminating assistance under the proposed rule is by evicting the tenant. The appropriate program parts have been amended to provide that failure of a tenant to supply, and to receive necessary verification of, reqired evidence of citizenship or eligible immigration status constitutes material noncompliance with the lease agreement, and thus may serve as a basis for eviction.

The general provision on eviction under the Section 8 programs (other than Certificate, Housing Voucher, and Moderate Rehabilitation), is located at § 812.9(d)(6). Individual program part references are located at §§ 880.607(b)(3), §§ 881.607(b)(3), and §§ 883.708(b)(3). In the Section 8 program on special allocations (Part 886), § 886.328 was recently amended in a separate rulemaking to provide that the eviction procedures of Part 247 are to govern evictions under Part 886. This proposed rule would necessitate that the requirements of both Parts 247 and 812 apply to an eviction based upon a tenant's failure to supply, and receive necessary verification of, evidence of citizenship or eligible immigration status.

In the rent supplement program and the Section 236 interest reduction payments and rental assistance payments program, the provisions regarding evictin are located at §§ 200.186(d)(6) and 247.3(c). In the public housing program, eviction is the only method of terminating an assisted tenancy, and the applicable procedurs are found in 24 CFR Part 966.

4. Reexamination of Income and Family Composition

Provisins concerning regular and interim reexaminations of imcome and family composition are found in the parts governing all the programs covered by this rule: § 215.55 for the rent supplement program; § 235.350 for the Section 235 homeownership assistance program; § 236.80 for the Section 236 interest reduction payments and rental assistance payments programs; §§ 813.109, 880.603(c), 881.603(c), 882.212, 883.704(c), 884.218, 886.124, and 886.324 for the Section 8 housing assistance payments programs; § 850.151(f) for the housing development grant program; § 904.107(j) for the Turnkey III homeownership program, § 905.304(c) for Indian housing, and §§ 913.109 and 960.209 for the public housing rental program.

All of these sections are amended to clarify that reexaminations of family income and composition must include submission of information concerning eligible status in accordance with the general provisions on citizenship and alien status found in Part 200, Subpart G, Part 812, or Part 912, whichever is applicable.

5. Management Responsibilities

The Section 8 program regulations contain requirements concerning the management responsibilities of project owners and PHAs. These provisions would be amended to require that the owners of PHAs determine eligibility in accordance with Parts 812 and 813, which will mandate submission of required evidence, and necessary verfication, as well as collection and verification of income informationl.

6. Family Obligations

The Section 8 program regulations also contain requirements concerning family responsibilities, including the obligation to submit information concerning family income and composition in a timely fashion, as a condition fo the lease or as an overall program requirement (see §§ 880.607(b)(3), 881.607(b)(3), 882.118(a)(1), 883.708(b)(3), 886.124(c), and 886.328(b)(3)). A reference to information concerning citizenship or eligible immigration status is proposed to be added to these sections.

V. Basic Requirements of the Rule

A. Eligibility

Each of the three general parts dealing with the issue of alien eligibility (200, 812, and 912) states the general proposition: All United States citizens and nationals are eligible for financial assistance under the covered programs, and several categories of aliens are eligible:

—Persons admitted as permanent residents;

—Persons deemed lawfully admitted for permanent residence as an exercise of discretion by the Attorney General based on their residence since 1972;

—Refugees or asylees;

—Persons lawfully present as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons in the public interest;

—Persons lawfully present as a result of withholding of deportation by the Attorney General in recognition of a threat to life or freedom; and

—Persons lawfully admitted for temporary or permanent residence on the basis of residence since 1982.

Documents must be submitted for verification that an alien is in one of these eligible categories, and the rule lists the documents that are acceptable. Among those listed is a general category of "other documents specified by HUD in a document published in the **Federal Register.**" This last category is included because INS forms and other types of documentation may change from time to time, and the Department may need to update the types of acceptable documents.

B. Triggering Events

1. General

Each member of a family (including children) must demonstrate eligible status at admission to any of the covered programs and periodically, at income reexaminations. When a tenant changes from one assisted program to another or from an unassisted unit in a housing project to an assisted unit, information will be requested concerning eligible status. In the rental programs, applicants will be requested to submit information concerning eligible status along with information concerning income and other matters relevant to tenant selection. When the other information concerning eligibility for the program is verified, the alien status information also will be verified, in accordance with procedures described in this rule. In the Section 235 homeownership program, when a homeowner sells the property, the purchaser must submit evidence of eligible status in order to receive the benefit of assistance payments. Similarly, in the public and Indian housing homeownership programs, new homebuyers will be required to demonstrate eligible status when they seek to buy a unit in the program.

There are existing requirements for income reexaminations at least annually in each of these programs. In addition, most of the programs provide for interim reexaminations when income or family circumstances change. This rule is not intended to affect the usual schedule for income reexaminations. At the first annual reexamination after the effective date of the final rule, each family would be required to demonstrate eligible status of all family members. Thereafter, information concerning eligible immigration status must be provided at each annual reexamination, but citizens and nationals need not resubmit information on their status. At each subsequent interim reexamination of income and family composition that involves a change in family composition, information concerning the eligible status of new family members would be required.

Although a tenant need not demonstrate at the reexamination that family income continues to remain below the limit used to determine initial eligibility, the tenant must demonstrate at each reexamination continuing eligibility with respect to immigration status, with the exception of: (1) Citizens; (2) aliens who were at least 62 years of age and receiving assistance on the "date of enactment" of the 1987 Act; and (3) individuals in occupancy on the "date of enactment" who are permitted continuous assistance as a member of a mixed family or whose termination of assistance is temporarily deferred.

The reason for requiring submission of information concerning eligible status by aliens on an ongoing basis, while not requiring it for citizens and nationals, is that status as a citizen or national is seldom lost, but the legal status of an alien may change from time to time. Examples of possible changes in alien status, other than determinations that the previous status was obtained as a result of fraud, are a favorable change in political conditions in a country from which the United States has accepted refugees, or the change in status of an alien who becomes a lawful temporary resident under the changes enacted in IRCA, but fails to qualify for permanent residency at the expiration of the 30-month period of lawful temporary residency.

Although the *final* determination of eligible status will not be required until the prospective date of admission to an assisted unit or the effective date of the income reexamination, information concerning eligible status will be requested from an applicant or tenant sufficiently in advance of the admission date or reexamination effective date to permit verification of the information and observation of the procedural requirements of this regulation.

2. Transition

The previous final rule provided for an initial implementation period during which initial steps were to be taken to notify current participants of the impending requirements and no applicants were to be admitted until they had satisfed the new documentation requirements. The documentation requirements were not to be enforced against current participants unitl the first regular reexamination after the expiration of the initial implementation period, which was to start running on the effective date of the rule and expire 90 days thereafter. The effective date was to be a date by which HUD would be able to develop, publish and distribute instructions and supporting materials to implement the regulation.

One of the reasons for that initial implementation period was to delay the time when current participants would be required to document their status or have their assistance terminated. The statute did not contain any provision for leniency in the termination of assistance at that time, and the initial implementatioin period served that purpose.

This proposed rule does not contain such an initial implementation period. However, it does contemplate publication of a final rule with an effective date that is sufficiently delayed from the rule's publication date to permit development and dissemination of necessary impementing materials. Thereafter, lenient treatment to current participants who are not eligible under the rule will be governed by the statutory provisions for continuation of assistance to individuals in "mixed families" and by the temporary deferral of termination of assistance to individuals where it is necessary to permit the transition to other affordable housing.

C. "Date of Enactment"

As discussed in section IV (I) of this preamble, section 214(c)(1), which was added by the 1987 Act, confers discretion to continue assistance or deter termination of assistance on behalf of an individual for whom assistance would otherwise be terminated if that person was "receiving such assistance on the date of the enactment of the Housing and Community Development Act of 1987." The term "date of enactment" is also found in section 214(d) in the description of the elderly persons who need not provide documentation of their immigration status. The statute exempts from such documentation any individual who is "62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987".

Section 214 prohibits the Secretary from providing financial assistance on behalf of certain ineligible persons, but its provisions are too complex to be self-implementing as of the enactment date (February 5, 1988). Thus, its restrictions will not be felt until a final alien rule becomes effective. The general Congressional intent of section 214(c)(1) was to protect "the sanctity of the family." (See remarks of Sen. William

Armstrong, 133 Cong. Rec. S18615, December 21, 1987.) To honor this intent, the Department believes it necessary to implement the new protective provisions at the same time that section 214's restrictions will become effective. To do otherwise, would be to thwart Congress' pro-family intent by prematurely triggering the statute's protections and rendering them meaningless for families admitted after the enactment date but before a final rule effectively applies section 214's restrictions.

In other words, since the exact effect on persons applying for or participating in the covered HUD programs will not be known until publication of the final rule, the Secretary is interpreting the statutory language to permit lenient treatment to persons receiving assistance on the effective date of the *final rule*, when all parties affected will have notice of the methods HUD has chosen for implementing the statutory restrictions, rather than on the precise date of enactment of the 1987 Act. To limit lenient treatment to persons receiving assistance on the precise date of enactment would anomolously create a category of persons (admitted between February 5, 1988 and the final rule's effective date) who would be denied the new statutory protections simply because of the necessary lag time associated with promulgation of a final rule.

D. Submission of Evidence

The Immigration Reform and Control Act of 1986 (IRCA) (Pub. L. 99–603, approved November 6, 1986) amended section 214 of the Housing and Community Development Act of 1980 by providing a procedure for the submission and verification of evidence of citizenship or eligible immigration status.

The proposed rule includes a definition of the term "evidence of citizenship or eligible immigration status" at §§ 200.181, 812.2 and 912.2. The term refers to the documents that must be submitted by any individual who is, or will be, occupying an assisted dwelling unit. For U.S. citizens, the evidence consists of the signed declaration of U.S. citizenship (§§ 200.183(a), 812.6(a) or 912.6(a)), and a signed verification consent form.

Where the responsible entity has a reasonable basis for suspecting that the declaration of U.S. citizenship is fraudulent, documentation of citizenship must be submitted, such as a birth certificate or a U.S. passport. If the documentation is insufficient to establish citizenship, HUD assistance will be denied or terminated in accordance with prescribed procedures.

For aliens, the evidence that must be submitted includes a signed declaration of eligible immigration status, a signed verification consent form, and the INS documents described in §§ 200.183, 812.7 and 912.7.

Individuals who claim that they were 62 years of age or older and receiving HUD financial assistance on the effective date of the final rule must submit a declaration to that effect, together with a signed verification consent form. Such individuals would not be required under this proposed rule to allege or document citizenship or eligible immigration status.

Applicants would be notified of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Tenants would be notified of this requirement at the time the responsible entity notifies the tenant of the need to verify income. Applicants whose names are on a waiting list on the effective date of the final rule would be separately notified of the requirement to submit evidence of citizenship or eligible immigration status.

Evidence of citizenship or eligible immigration status also must be submitted at interim reexaminations whenever a tenant requests the responsible entity's approval of occupancy of the assisted dwelling unit by an additional person, other than a child born to the family. Failure to submit required evidence of citizenship or eligible immigration status would result in denial or termination of financial assistance, in accordance with the procedural requirements of the rule.

1. Declaration of Citizenship or Eligible Immigration Status

As a condition to the receipt of financial assistance, IRCA generally requires that every individual submit a written declaration indicating whether the individual is a U.S. citizen or otherwise is in an eligible immigration status. This declaration is submitted under penalty of perjury. In the case of a child, the written declaration must be submitted by an adult residing in the assisted dwelling unit who is responsible for the child. This requirement is set out in §§ 200.183(a), 812.6(a), and 912.6(a) of the proposed rule. Individuals who declare themselves to be in an eligible immigration status are required to submit alien registration documents, as specified in §§ 200.184, 812.7 and 912.7.

2. Verfication Consent Form

Applicants and tenants must submit a signed "verification consent form", consenting to certain uses of the information they submit. The form will also notify applicants and tenants of the possible uses of alien status information and the potential effects of disclosure.

Under the verfication consent form, applicants and tenants will authorize the responsible entity to release submitted evidence to HUD. The responsible entity does not have to examine prospective uses by HUD of evidence submitted by the applicant or tenant, or to determine whether the HUD officials to whom the information is released are directly connected to the administration of the particular assistance program.

The verification consent form also will permit the responsible entity to release information to a Federal, State, or local government agency to: (1) Verify eligible immigration status; (2) enforce restrictions on availability of financial assistance because of such status; and (3) investigate or prosecute fraud in connection with any Federal housing assistance program, as permitted under any applicable State or local laws concerning the protection of personal privacy.

Applicants and tenants will also authorize HUD under the verification consent form to release information on alien status to Federal, State or local government agencies for the purposes cited above. Where these agencies require information from HUD for the investigation or prosecution of fraud, HUD may release information in accordance with the requirements of the Privacy Act of 1974, 5 U.S.C. 552a. In signing the verification consent form, applicants and tenants should understand that information submitted to the responsible entity may be released to HUD, and may be released by HUD for legitimate purposes connected with the mission of the Department.

However, the rule does not seek to regulate the further use of the information by the entity receiving the information, or to control any further release or transmission of the information. The applicant or tenant will be notified specifically that information released by HUD to the INS in connection with verifying immigration status may be used by the INS to institute deportation proceedings.

The verification consent form will include an authorization by the applicant or tenant that authorizes other Federal, State or local agencies to release information to HUD or to the responsible entity. The form will provide that a governmental agency may release any information which HUD or the

responsible entity "determines to be necessary" for verification of eligible immigration status, or for the enforcement of the restrictions on the availability of financial assistance because of such status. The regulatory language governing the applicant's or tenant's consent to release of information bearing on enforcement of Section 214 is similar to existing regulatory language concerning a family's consent to release of information bearing on determinations of family eligibility or rent.

3. Documentation of Eligible Immigration Status

The affirmative obligation to submit documentation of eligible immigration status is contained in the IRCA and 1987 Housing Act amendments to Section 214. These amendments provide that:

> If such an individual is not a citizen or national of the United States, is not 62 years of age or older, and is receiving financial assistance on the date of the enactment of the Housing and Community Development Act of 1987, there must be presented * * * reasonable evidence indicating a satisfactory immigration status.

The Department interprets this language to require that applicants and tenants who are neither citizens nor elderly individuals already receiving assistance, but declare in writing that they are in an eligible immigration status, must provide INS documents to verify such status (as described at §§ 200.184, 812.7 and 912.7).

Individuals who declare in writing that on the effective date of the final rule they were 62 years of age or older and receiving HUD financial assistance must submit proof of age, but are neither required to declare nor to document citizenship or eligible immigration status. Proof of age must be established in accordance with existing program requirements.

Submission of evidence that an occupant is a citizen or that, as of the effective date of the final rule, the occupant was 62 years of age or older and receiving HUD financial assistance, is required only once during continuously assisted occupancy.

In general, individuals who declare in writing that they are U.S. citizens would not be required to submit documentation of citizenship. Documentation of citizenship may be requested if the responsible entity has reason to suspect that the declaration of citizenship submitted by the applicant or tenant is fraudulent.

Under this proposed rule, a responsible entity has "reason to suspect" that evidence submitted is fraudulent if, in the course of verifying the individual's eligibility for financial assistance or program participation, conflicting or inconsistent information regarding the identity or claimed citizenship of the individual is discovered. This information could include differing social security numbers or information received through credit checks (in the course of income verification) that reveal a different status from that claimed on the declaration.

Alternatively, the responsible entity would have "reason to suspect" fraudulent information if it is informed that the individual's claimed citizenship status is fraudulent. However, a responsible entity may not request documentation of citizenship unless the information received is corroborated by evidence, such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

In no event may a responsible entity request documentation of citizenship based upon an applicant's or tenant's personal appearance or traits, or because of unsubstantiated allegations that the individual is not a U.S. citizen.

4. Program Rules for Documenting Eligibility; Terminology

The rule uses the existing vocabulary of the applicable programs to designate the entity for whom assistance is paid, and who must comply with program rules: "applicant" and "tenant" in Part 200 for the Section 236 and rent supplement rental programs (and for Section 235 homeownership) "applicant" and "mortgagor" in Part 235 for Section 235 assisted homebuyers, "applicant" and "Family" in Parts 812 and 912 for Section 8 and public housing programs.

In each program, the party that determines whether a family is otherwise eligible for assistance also administers the restrictions on alien eligibility. Evidence of citizenship or eligible immigration status would be submitted by the family to this party:

—For financial assistance in the form of rent supplement payments, or in the form of Section 236 interest reduction payments or rental assistance payments, the required evidence would be submitted to the owner of the assisted housing.

—Similarly, for project-based section 8 (other than Section 8 Moderate Rehab), the evidence would be submitted to the Section 8 owner.

—In the public housing program, the Section 8 Certificate and Housing Voucher programs, and the Section 8 Moderate Rehabilitation program, the PHA determines eligibility for assistance. Evidence of citizenship or eligible immigration status therefore would be submitted by the family to the PHA.

—In the Section 235 program, the evidence would be submitted by the applicant or mortgagor to the mortgagee.

The term "responsible entity" is used in this proposed rule for precision in designating the entity responsible for administering the restrictions on providing assistance to ineligible aliens in the different Section 8 programs. For ease of exposition, the term "responsible entity" is used more broadly in this Preamble to refer to the entity that administers the section 214 restrictions in any of the covered programs.

E. Verification of Documents

Section 121 of IRCA provides for the establishment and implementation of a system to verify the status of aliens applying for federally funded entitlements. One aspect of that system is the Systematic Alien Verification for Entitlements (SAVE) program designed to prevent ineligible aliens from receiving federally subsidized benefits.

1. Primary Verification

Under the SAVE system, initial verification of eligibility is established by automated access to the Alien Status Verification Index (ASVI), a data base maintained by the INS that contains information on over 22 million aliens. There are a number of different methods for accessing ASVI, which might include any of the following:

—User's computer system to ASVI data base via dedicated telecommunication line (CRT display).

—User's "personal computer" with modem to ASVI data base (CRT display).

—"Point-of-sale" equipment to ASVI data base (LED or LCD display). (Point-of-sale machines are key-pad terminals with digital response displays that use standard telephone lines and require cards with magnetic information strips to access the data base).

—Touch-tone telephone access to ASVI data base. (Computerized voice data response).

—Magnetic tape match against ASVI data base. (Magnetic tape response or paper print-out of results).

HUD is participating in the SAVE system for purposes of verifying the eligibility of applicants and tenants to receive housing assistance in accordance with the procedures established at §§ 200.185, 812.8, and 912.8. Based upon its particular needs, the responsible entity will determine the specific method for accessing the ASVI database. Subject to the availability of funds, the Department expects that the

costs associated with verifying eligible immigration status through the SAVE system will be billed to, and paid by, the Department.

All applicants and tenants who are required to submit evidence of eligible immigration status would have to submit original INS documents to the responsible entity. Until verification of immigration status is received, the responsible entity would continue the normal procedure for processing an applicant to establish eligibility for financial assistance, if the applicant otherwise qualifies for such assistance.

In most instances, the evidence submitted will contain an Alien Registration Number, commonly referred to as an "A-number". The responsible entity will use the A-number to verify the individual's eligibility through the ASVI data base. Verification is instituted by comparing the data on the original INS document to the corresponding ASVI fields. The biographical data and status information the ASVI must correspond to the data on the documentation. If the responsible entity determines that material discrepancies exist, it should initiate a secondary verification, as discussed below.

Some forms of acceptable INS documents do not contain a photograph of the individual. When such documentation is presented, the project owner or responsible entity should request another identity document, such as a driver's license or employment I.D., that has a photograph to verify the identity of the alien.

If the primary verification system indicates that the applicant or tenant has eligible status, financial assistance may not be denied or terminated on the basis of immigration status.

2. Secondary Verification

A. *Procedures.* Secondary verification constitutes an appeal of the primary verification determination and is accomplished by sending photocopies of original immigration documents, attached to Document Verification Request Form G–845, to a designated INS field office for review. This procedure should be instituted whenever:

—Primary verification is either unavailable to, or not feasible for use by, the responsible entity;

—Primary verification instructs the responsible entity to institute secondary verification;

—Primary verification is unable to verify the immigration status of the applicant or tenant;

—Documents are submitted by the applicant or tenant that indicate immigration status, but do not contain an "A-number"; or

—An INS receipt is submitted as documentation.

B. *Denial or termination of assistance.* Once secondary verification is instituted, the responsible entity would continue processing an applicant for purposes of establishing eligibility for financial assistance (if the applicant otherwise qualifies for such assistance). Once eligibility other than eligible immigration status is established, the responsible entity would place the applicant's name on any waiting list so that the applicant can work his or her way up the list while the verification determination is pending. Financial assistance may not, however, be provided to an applicant until eligible immigration status is verified through the INS.

Conversely, financial assistance to a *tenant* may not be terminated on the basis of the tenant's immigration status pending the outcome of any secondary verification. The Department's determination not to provide housing assistance to an applicant, while continuing to provide assistance to a tenant pending the outcome of the secondary verification (and, indeed, pending the fair hearing determination, if requested by the tenant) is predicated upon the language of IRCA. Section 121 of IRCA, which amended the Housing and Community Development Act of 1980, provides that:

> The Secretary shall provide a reasonable opportunity to submit to the Secretary evidence indicating a satisfactory immigration status, or to appeal to the Immigration and Naturalization Service * * * and *may not delay, deny, reduce, or terminate the individual's eligibility for financial assistance on the basis of the individual's immigration status until such a reasonable opportunity has been provided.* (Emphasis added).

The Department does not interpret this statutory language as requiring HUD to provide financial assistance to an applicant pending the "reasonable opportunity" period. Instead, IRCA appears to contemplate that the individual's "eligibility for financial assistance" not be delayed, denied, or terminated. This provision is consonant with the Department's proposed requirement that the responsible entity continue to process an applicant for purposes of establishing eligibility for financial assistance, and that the applicant's name be placed on a waiting list once eligibility (aside from eligible immigration status) has been established. In this manner, the applicant's eligibility for financial assistance would not be delayed pending the secondary verification (assuming the applicant otherwise qualifies for financial assistance), even though assistance would not actually be provided until eligible immigration status is verified. It should be pointed out, however, that an applicant who reaches the top of the waiting list would qualify for the next available unit, subject to program preferences and priorities, once verification of eligible immigration status is confirmed.

On the other hand, assistance to a tenant may not be terminated (assuming the tenant otherwise qualifies for such assistance) until secondary verification establishes that the tenant is not in an eligible immigration status. Even then, if the tenant requests a hearing following the determination of ineligibility, assistance may not be terminated on the basis of immigration status until the conclusion of the hearing. The Department believes that it would pose an extraordinary burden on tenants to require that assistance be terminated (and in the public housing program, this would automatically result in eviction of the tenant) until such time as the entire range of procedural protections has been provided and exhausted. This would include secondary verification of eligible immigration status with the INS, as well as the fair hearing process described in this proposed rule.

However, it should be noted that a tenant who applies for a different form of HUD financial assistance pending the verification outcome (i.e., a tenant currently paying a below market rent in a project that receives the benefit of section 236 interest reduction payments who applies for section 236 rental assistance payments) would be treated the same as any other applicant. Namely, the application would continue to be processed for purposes of establishing eligibility, but the new form of assistance could not be approved until eligible immigration status is verified through the INS.

Another issue raised by section 121 of IRCA relates to the statutory requirement that the Department not "delay, deny, *reduce*, or terminate the individual's eligibility for financial assistance." In this proposed rule, the Department does not provide for the "reduction" of financial assistance based upon an individual's immigration status, since neither IRCA nor any other statute provides for making reduced assistance available on the basis of ineligible immigration status. In fact, a reduction of assistance to a family based on prorating HUD assistance because of the ineligible immigration status of individual family members

would undermine the purpose of the 1987 Act language which permits assistance to be continued on behalf of a family containing ineligible individuals. Moreover, as previously explained in the preamble to the never-implemented October 4, 1982 rule (47 FR 43676), proration of assistance is not a feasible alternative under these HUD programs. Rather than authorizing or directing proration of assistance for mixed families, section 214's only reference to the "reduction" of subsidies is the command *not* to "delay, deny, reduce or terminate" assistance pending verification of eligibility. The Department thus construes section 214(c) of the 1980 Act (as amended by the 1987 Housing Act), to permit full assistance to the family unit or temporary deferral of termination, as the only alternatives to immediate termination for a family containing an ineligible individual. As a result, HUD has no statutory authority to provide for the prorating of assistance based upon the status of individual family members. Until a family receiving assistance is determined to be ineligible for financial assistance because individual family members lack eligible immigration status, assistance is continued in full. Thereafter, upon a determination of ineligible status, financial assistance would be terminated unless the family qualifies under the requirements specified in this proposed rule for continued assistance or temporary deferral of termination.

C. *Procedures when fraud is suspected with respect to citizenship.* This proposed rule provides for submission of documentation of citizenship only when the responsible entity "has reason to believe" that a declaration of citizenship is fraudulent.

A responsible entity has "reason to believe" that a declaration of citizenship submitted by an applicant or tenant is fraudulent only under certain circumstances. These include the responsible entity's discovering conflicting or inconsistent information regarding the identity of the individual, including INS documents that appear counterfeit, or information discovered in the course of verifying the individual's eligibility for assistance that refutes the individual's claimed citizenship.

In addition, a responsible entity has "reason to believe" that evidence submitted by an applicant or tenant is fraudulent if the responsible entity is informed (and receives written corroboration) that the individual's claimed declaration of citizenship is fraudulent. Corroboration might be in the form of INS documents or deportation orders, or records establishing foreign citizenship. In no event should a responsible entity require additional documentation based solely on an individual's personal appearance or traits or based upon unsubstantiated allegations of ineligible status.

A responsible entity that has reason to believe, under the criteria discussed above, that evidence submitted by an applicant or tenant is fraudulent, should require submission of documentation of citizenship. This documentation may be in the form of a U.S. passport, birth certificate, or other indicia of citizenship in accordance with HUD requirements. If the individual fails to submit required evidence of citizenship when requested, or if the evidence submitted fails to substantiate citizenship status, the responsible entity should take appropriate action to deny or terminate assistance, in accordance with applicable procedural requirements.

When a responsible entity has terminated assistance because an individual intentionally misrepresented eligibility on the basis of citizenship, the amount of assistance improperly paid is substantial, and recovery of the funds cannot be achieved by administrative action, the responsible entity may refer the case to the HUD Regional Inspector General for investigation and possible criminal prosecution under the False Statements Act.

F. Fair Hearing Provisions

Section 214(d)(5) of the Housing and Community Development Act, as amended, requires the responsible entity, after providing the applicant or tenant with an opportunity to submit evidence and to establish eligible immigration status through the INS primary or secondary verification systems, to make a determination as to whether the individual is in an eligible immigration status.

If an applicant is determined *not* to be in an eligible immigration status, section 214(d)(6) requires the responsible entity to notify the applicant in writing that his or her eligibility for financial assistance is denied. The applicant must also be notified of the basis for the denial of assistance, and of the right to request an informal hearing.

The purpose of this informal hearing is to provide the applicant with a final opportunity to present documentation of citizenship (if required because the responsible entity has a reasonable belief to suspect a fraudulent declaration of citizenship), or to submit documentation of an INS determination of eligible immigration status, as specified in this rule.

Similarly, once a tenant is determined not to be in an eligible immigration status, the responsible entity must inform the tenant in writing that the tenant's eligibility for financial assistance is terminated, and must provide a statement of the grounds for termination of assistance. The tenant must also be informed of the right to request a hearing. For tenants who otherwise qualify for assistance, and who request a hearing, financial assistance *may not* be terminated until the conclusion of the informal hearing.

Under this rule, the procedures governing the fair hearing process are essentially the same for both applicants and tenants. In the public housing program, the requirements for denial of assistance are specified at 24 CFR 960.207, while termination of assistance would be governed by the Lease and Grievance procedures established under Part 966.

In the Section 8 programs administered by a PHA (i.e., Certificate, Housing Voucher, and Moderate Rehabilitation), denial and termination of assistance would be governed by the requirements of 24 CFR 882.216.

For all other covered programs, the requirements governing denial and termination of assistance would be the procedures specified at §§ 200.186 and 812.9. These provisions establish that, upon timely request for an informal hearing, the applicant or tenant must have an opportunity to meet with any persons designated by the responsible entity (other than a person who made or approved the decision under review, or a subordinate of such person; however, this individual may be an employee or officer of the PHA or owner). The petitioner also must have an opportunity to be represented by an attorney (or other designee) at his or her own expense, and to present evidence of citizenship (if required), or of an INS determination of eligible immigration status, as established in this rule. The responsible entity is required to provide the applicant or tenant with a written determination within five days of the informal hearing, stating the basis for the decision.

In addition, the responsible entity is required to retain certain materials for a period of three years, including: (i) The application for financial assistance; (ii) photocopies of any documentation submitted (front and back); (iii) the signed verification consent form; (iv) proof of INS verification; (v) the applicant's request for an informal hearing; and (vi) the responsible entity's final determination of ineligibility following the informal hearing.

G. Denial of Assistance

Section 214 states that HUD may not "make financial assistance available for the benefit of" aliens not legally resident in the United States under the Immigration and Nationality Act, as amended. This proposed rule describes the circumstances under which a new commitment for housing subsidy must be denied if a family does not provide required evidence of citizenship or eligible immigration status. For purposes of this rule, "denial of assistance" encompasses both denial of initial admission into a housing subsidy program, and denial of a new assistance commitment on behalf of a current tenant. It also encompasses denial of assistance to a market rent tenant who applies for below-market rent assistance under the Section 236 program. In all cases, a denial of assistance must be carried out in accordance with law and applicable HUD rules and requirements—in particular the proposed procedural requirements discussed above.

1. Admission

The proposed rule provides that the entity that administers the prohibition on assistance to ineligible aliens may not "admit an applicant" for participation in the program unless required evidence of citizenship or eligible immigration status has been submitted and verified for each family member, regardless of age, who is or will be occupying the unit.

The concept of "admission" is common to all of the programs, and is widely used in existing program regulations and handbooks. As used in the context of the alien prohibition, the term is intended to denote the concrete administrative and contractual actions through which a family becomes a tenant in a covered program. HUD Handbooks more elaborately discuss the point at which an applicant becomes a tenant in the programs affected by this proposed rule.

In the Certificate and Housing Voucher programs, the proposed rule anticipates that the PHA will not issue a Certificate or Housing Voucher if the family has not submitted evidence of eligibility when required. This prohibition would apply both a family applying for participation in the program, and a tenant family that wants to move to another dwelling unit.

2. Approval of New Occupant

Before admission of a family, the responsible entity would determine who may occupy the assisted unit. After initial admission, the family must also request approval for occupancy of the assisted dwelling unit by any additional person (other than a child born to the family). Until the family submits the required evidence, the responsible entity may not approve occupancy of the assisted dwelling unit by the new person.

Assistance for the entire family is terminated if a tenant family fails to get approval by the responsible entity for occupancy of the unit by a new person and the new person does not move from the unit. However, termination of assistance may be deferred if the tenant qualifies under section 214(c)(1)'s special provisions for preservation of families (§§ 200.187; 812.10; 912.10).

3. Change in Form of Assistance

In some cases, assistance may be paid for a unit under more than one rental subsidy program under Part 200: For example, a unit may be assisted with a combination of Section 236 interest reduction payments and rent supplement payments or Section 236 rental assistance payments. The configuration of assistance for a unit may change during the term of a tenant's lease. The proposed rule prohibits the owner from starting a new form of financial assistance for the tenant family under a lease previously entered unless the family submits and receives verification of citizenship or eligible immigration status. This prohibition also would extend to market rent tenants under the Section 236 program who subsequently apply for below market rent assistance.

H. Termination of Assistance

1. Generally

Under the proposed rule, ongoing assistance for a family is terminated in four cases:

—If evidence of citizenship or eligible immigration status is not submitted at reexamination when required.

—If the INS primary or manual verification system establishes that the tenant does not have eligible immigration status.

—If the family fails to get approval by the responsible entity for occupancy of the assisted unit by a new person.

—If a family is admitted with financial assistance, but the responsible entity is subsequently informed by HUD, or otherwise determines, in accordance with HUD requirements, that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence.

In each instance, the subsidy is terminated by the party responsible for enforcing the alien restrictions: (1) The PHA in public housing, the Section 8 Certificate and Housing Voucher programs, and the Section 8 Moderate Rehabilitation program, and (2) the owner of the housing in the FHA subsidy programs and the other Section 8 programs.

a. *When Termination of Assistance Occurs.* In the proposed rule, the time at which assistance is terminated depends upon:

(A) *The occurrence of the event that triggers termination of assistance:* i.e. the family's failure to submit evidence at reexamination; INS verification establishing that the tenant does not have eligible immigration status; the owner's discovering that documents submitted are not valid or authentic, or that a new person is living in the unit without the owner's approval.

(B) The *owner's duty to terminate assistance "promptly"* after occurrence of the termination event. As discussed, assistance could be terminated by evicting the family, by charging market rent for the unit, or by entering a new lease. The time needed to terminate assistance may differ for these different termination procedures.

(C) The rule defining *how long assistance paymants may continue.* Under the proposed rule, after occurrence of a termination event, assistance would be terminated *in accordance with HUD requirements.* However, the rule would allow continuation of assistance during the time needed for eviction of the family through judicial processes. Moreover, termination of assistance of current participants would be subject to section 214(c)(1)'s discretionary protections for preserving families and ensuring an orderly transition to unsubsidized status.

b. *When Termination of Assistance Not Required.* When the family does not submit evidence for all members at annual reexamination, or doesnot get approval from the responsible entity for occupancy by a new family member, the responsible entity is required to proceed with the termination of financial assistance unless "any person for whom required evidence has not been submitted by the tenant has moved from the assisted dwelling unit", or if any person determined not to be in an eligible immigration status following verification has moved from the assisted dwelling unit.

Similarly, the Department has modified its previous alien restrictions that would have precluded continued assisted occupancy by a family after a family member is determined to have

submitted fraudulent evidence of citizenship or eligible immigration status. Under this proposed rule, the family may remain in the assisted dwelling unit if the person who signed and submitted the fraudulent declaration of citizenship or eligible immigration status vacates the unit. This change was made in order to prevent the family from being penalized for the fraudulent actions of one family member.

c. *Extension of Time for Tenants to Provide Evidence.* The proposed rule would grant the responsible entity discretion to extend, for up to 90 days, the time for a tenant family to submit evidence of citizenship or eligible immigration status. The authority to grant an extension of time for submitting documents would only apply to existing tenants. Applicants could not be admitted without submision of evidence of citizenship or eligible immigration status, nor could a tenant qualify for a new form of housing assistance pending submission and verification of documents.

A tenant may not be able to secure and submit the required documents in time for submission at the annual reexamination. All members of the family may be citizens or lawful permanent residents of the United States. However, for variety of justified reasons, a family may need more time to obtain the documents.

The regulatory authority to extend time to produce required evidence is intended to accommodate enforcement of section 214 with a recognition of the practical problems that tenant families may face in obtaining the requisite proof of eligibility.

The proposed rule provides that the responsible entity may allow an extension of time for a tenant to submit required evidence only if:

(1) Tlhe family certifies that any person for whom required evidence has not yet been submitted is a citizen or eligible alien, but shows that the family is temporarily unable to obtain evidence to support a claim of eligible immigration status, and needs additional time to obtain and submit the evidence.

(2) The family promises to make prompt and diligent efforts to obtain the evidence.

The PHA or owner may not excuse any family or family member from the duty to produce the required evidence. The discretion to issue an extension only covers a situation in which the family is "temporarily unable" to produce the documents, and "needs additional time to obtain and submit the evidence."

Corresponding to the purpose of the authority for extensions, an extension granted by the responsible entity "shall be for a specific period needed to obtain the evidence." Where the family is required to submit evidence at an annual reexamination, an extension may not allow submission of the evidence beyond *ninety days after the effective date of the reexamination.* Where the family is required to request approval for occupancy of the dwelling unit by an additional person, an extension will not allow submission beyond *ninety days after occupancy by the additional person.*

All applicants would be required to submit evidence before admission. Therefore, the principal need for submissions after admission occurs if there are aliens in the family (who must be redocumented at each regular reexamination), or if another person wants to move into the unit. The demand for evidence (and consequently the need for more time to produce the evidence) would be limited to these circumstances, and to the individual family members for whom additional evidence is required.

A decision to grant an extension of time for a family to submit the required evidence, and a determination of the length of the extension, would be required to be made by the responsible entity on a case by case basis, "in accordance with HUD requirements, and after considering the facts and circumstances of the individual case." The issuance of an extension is not automatic or routine. The responsible entity could not, under the rule, avoid the responsibility of enforcing Section 214 requirements by the wholesale issuance of extensions.

If the family has not submitted the evidence by the end of the extension, the responsible entity would be required promptly to take necessary action to terminate financial assistance.

The Department recognizes that there is potential for abuse of the discretion to grant extensions. Some PHAs or owners may be unsympathetic with the objectives and requirements of section 214, or they may wish to avoid cost or administrative problems. To minimize abuse of the discretion to grant extensions, and to maximize accountability for the exercise of this discretionary authority, the rule states that a decision by the responsbile entity to grant an extension:

> Shall be in writing, and shall state the reasons for the * * * determination * * * [The responsible entity] shall provide information required by HUD concerning the [responsible entity's] policy and practice regarding extension.

The granting of an extension would suspend the duty of the responsible entity to terminate assistance for the family. However, the authority to grant an extension would not apply if the responsible entity learns that evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or otherwise is not valid or authentic evidence of eligibility. The authority to grant an extension would only apply if the responsible entity would otherwise be required to terminate assistance because the family did not obtain approval for occupancy by a new person or because the family did not submit required evidence at reexamination.

d. *Conditions For Resumption of Assistance After Termination.* The proposed rule provides that if financial assistance for a tenant is terminated, the assistance would not resume unless:

> (1) All required evidence has been submitted by the tenant to the owner, and
>
> (2) Resumption of assistance is authorized in accordance with HUD requirements.

The rule would require submission and verification of evidence at specified times, and termination of assistance if the evidence is not produced. There will be cases where a resumption of assistance is appropriate, and other cases where it is not. The rule should not mechanically and uniformly bar a resumption of assistance once required evidence has been submitted. There should be regulatory flexibility for HUD to allow resumption of assistance in appropriate circumstances, but without allowing casual disregard for the deadlines established for submission of evidence. To accommodate both of these objectives, the proposed rule only permits resumption of assistance when "authorized in accordance with HUD requirements." These requirements will be set out in greater detail by the Department in program handbooks.

The proposed rule would permit the development and evolution of HUD requirements for resumption of assistance in response to the Department's day to day experience in administration of the rule. The Department intends that these requirements be at once consistent with a vigorous enforcement of the requirements of Section 214 and its implementing regulations, and with flexible application of the statutory requirements to the circumstances of individuals who would be affected by the rule.

2. Public Housing

In the public housing program (including Indian housing and the public housing homeownership programs), the PHA owns the unit that is rented to the family. In the Section 23 Leased Housing program, the PHA leases the unit from the owner and subleases to the tenant. Because of the structure of these programs, public housing or leased housing program participation can only be terminated by eviction of a family that has not submitted the evidence of citizenship or eligible immigration status for unit occupants.

Under the proposed rule, where termination of assistance is required, the PHA must promptly initiate and diligently pursue action to terminate the tenancy, and to evict the tenant by judicial action under State and local law. PHA action to terminate tenancy and to evict the tenant must be in accordance with Part 966, which contains both requirements for public housing leases (Subpart A) (including provisions which establish the family's duty to furnish information bearing on family eligibility, and grounds for termination of the lease); and for the PHA administrative grievance procedures (Subpart B).

HUD is amending Part 966 through a separate rulemaking in accordance with section 204 of the Housing and Urban-Rural Recovery Act of 1983 (HURRA), which states requirements for Public Housing leases and administrative grievance procedures (Pub. L. 98-181, November 30, 1983, amending section 6 of the U.S. Housing Act of 1937, 42 U.S.C. 1437d). Section 204 of the HURRA requires a PHA to implement an administrative grievance procedure for PHA adverse action, but allows a PHA to dispense with an administrative grievance hearing on an eviction or termination of tenancy if HUD has determined that State law mandates a judicial hearing that provides the basic elements of due process.

Until amendments of Part 966 become effective, implementation of the alien exclusion will be governed by the present lease and grievance procedure.

These points should be noted:

(1) Under present HUD requirements, the lease must include an agreement by the tenant to furnish information and certifications on family composition that the PHA needs in order to determine family eligibility. Under the lease, therefore, the tenant would be required to furnish the evidence of citizenship or eligible immigration status necessary for the PHA to determine eligibility for occupancy in accordance with section 214.

(2) Under present HUD requirements and section 6(1)(4) of the Act, the PHA may not terminate tenancy except for serious or repeated violation of the lease or other good cause. Failure to satisfy section 214 evidence requirements will constitute both a serious violation of the lease, and "other good cause" for termination.

The proposed rule provides that the PHA may halt action to terminate tenancy and to evict the family if all required evidence is submitted by the Family to the PHA, verification is received from the INS, and continuation of assistance is authorized in accordance with HUD requirements.

3. Section 8 Certificate, Housing Voucher and Moderate Rehabilitation Programs

In these programs, the PHA is not the landlord of the assisted unit. The PHA determines family eligibility and enters into an assistance contract (Housing Assistance Payment Contract or Housing Voucher Contract) with the owner.

Under the proposed rule, each assisted family would have the duty to submit to the PHA required evidence of citizenship or eligible immigration status for unit occupants. The regulations for the Section 8 Certificate program contain a complete list of the duties of a program family.

Principles governing operation of the Housing Voucher program are currently stated in the Notice of Funding Availability (NOFA) published on March 23, 1988 (53 FR 9572) which includes a specific statement of family obligations. While the NOFA is not being amended at this time to insert a reference to the requirement for submission of evidence under section 214, the duty to submit the evidence is included in the duty (section III.Q.(a) of the NOFA) to supply any information or documentation that the PHA or HUD determine to be necessary in administration of the Housing Voucher program at a regular or interim reexamination of family income and composition. (When a codification of the Housing Voucher program is published, it will serve as the foundation for amendments implementing the section 214 restrictions.)

Under the proposed rule, if proper evidence of citizenship or eligible immigration status has not been furnished, the PHA would be required to "promptly terminate housing assistance payments" to the Section 8 owner on behalf of the family. The termination of subsidy, however, would have to be carried out in accordance with the fair hearing procedures established at 24 CFR 882.216 (see Section (T) of the March 23, 1988 NOFA) and § 812.9.

In the Section 8 Certificate and Housing Voucher programs, the HAP Contract is for a single unit, and for assistance on behalf of a specific family. The family is named in the assistance contract. Therefore, when assistance payments for the family are terminated by the PHA, there are no further payments under the contract. However, in the Section 8 Moderate Rehabilitation program, the PHA agrees to make housing assistance payments during the contract term for units occupied by eligible families referred to the owner by the PHA. Therefore, assistance payments will continue for other contract units, and the owner could evict the ineligible family and lease the contract unit to an eligible family (which has presented and received verification by the PHA of the required evidence of citizenship or eligible immigration status).

4. Rent Supplement and Section 236 Programs and Other Section 8 Programs

In the Section 236 programs (below market rent tenants only), the other Section 8 programs, and the Rent Supplement program, the project owner would enforce the restrictions on occupancy by ineligible aliens. The proposed rule provides that when the family is not eligible to continue assisted occupancy, the owner must "promptly" terminate financial assistance for the family. Assistance is terminated either by the *commencement of an unassisted tenancy* or by *eviction* of the family from the unit. An unassisted tenancy can be created either by raising the lease rental to the unsubsidized market rent, if permitted by the lease, or by entering into a new unassisted lease with the family.

Thus, the owner has the choice of three ways of terminating assistance for the family: (1) Evict the family; (2) raise the rent to the HUD-approved market rent where permitted under terms of the lease; or (3) enter into a new unassisted lease with the family.

Under the proposed rule, the choice among these alternatives is left to the management judgment of the owner. HUD believes that the discretion of the housing owner to make this choice should not be dictated by the Federal regulation. Section 214 requires termination of financial assistance if the unit is occupied by an ineligible alien, but does not specify the mechanics of termination in each program, or dictate the choice between available techniques for terminating subsidy in each program.

The extent of federal regulatory controls over the termination of assisted tenancy should be the minimum needed to accomplish the statutory objectives of section 214, with the minimum interference in the management practices and prerogatives of project owners. Implementation of the statutory requirement for termination of subsidy to families with ineligible members is not a reason for requiring the owner to accept a tenancy when assistance is no longer being paid for the family.

Once the owner is confronted with the necessity of terminating subsidy on behalf of the family, then the owner should be free to exercise his or her ordinary business and management judgment concerning the acceptability of the tenant. The owner may have a legitimate concern not just with the tenant's ability to pay the rent with available income, but with the reliability and promptness of payment. Other business consequences may flow from the owner's choice. If the owner chooses to evict the family, instead of offering an unassisted lease or a market rate rental, the unit is available for rental to a new family that is eligible for assistance. Conversely, if the owner decides to allow the original family to remain in the unit without assistance, the owner may be unable to make available for assisted families the full number of units for which assistance is committed under the assistance contract. Thus in some cases the owner's election to evict may promote the objective of assuring, in accordance with the objectives of section 214, that scarce housing resources are preserved and used for eligible families.

The option to raise the tenant's rent to market rate rent is only available to the owner if permitted under the lease. The option to enter a new unassisted lease with the family is available to the owner only if the family is willing to sign a new lease. Therefore, the owner may not in a particular case have the practical option of choosing from the full range of alternatives to eviction allowed under the proposed rule.

Finally, if the owner desires to evict the family, the family may only be evicted after the informal hearing provided under this rule, and thereafter through the judicial process, which gives the opportunity for a judicial hearing on the grounds for termination of tenancy.

a. *Commencement of Unassisted Tenancy*—(i) *Generally.* If a tenant is not eligible for continued assisted occupancy, the owner does not have to evict the family from the dwelling unit so long as the assistance is terminated. Section 214 prohibits payment of housing subsidy for an ineligible alien but does not, as such, prohibit unassisted occupancy of the unit by the alien. In public housing, assistance is not separable from occupancy, and eviction of the family is the only way to terminate assistance. However, in the Section 8, Section 236, Rent Supplement and Section 235 programs, financial assistance can be terminated without terminating occupancy by the family, as discussed above. After termination of assistance, the "tenant" would be required to pay the HUD-approved market rent (Section 236), the contract rent (Section 8), or the full mortgage payments (Section 235).

(ii) *Requiring Tenant to pay market rent.* The owner may increase the rent to the level of the HUD-approved market rent where permitted under the lease. For programs covered by the HUD model lease (HUD Handbook 4350.3, Appendix 19a), the lease provides in section 4 that the amount of rent paid by the tenant, and the assistance HUD pays on behalf of the tenant:

> *May be changed during the term of this Agreement* (i.e., the lease) if * * * changes in the Tenant's rent or assistance payment are required by HUD's *recertification or subsidy termination procedures* * * * *(emphasis added).*

The proposed rule requires termination of subsidy for an assisted tenant who fails to submit evidence (and necessary verification) of citizenship or eligible immigration status, including a failure to furnish the evidence at recertification. The regulatory procedures for termination require the owner to implement one of the three available options for termination of subsidy, including raising the rent to the HUD-approved market rent. The model lease also provides under Section 15.a that if the tenant does not timely submit information on family composition at the annual reexamination:

> Required by HUD for the purposes of determining the Tenant's rent and assistance payment [the owner may] * * * require the Tenant to pay the higher, HUD-approved market rent for the unit. (In this case, the owner is not required to give 30 days notice of the rent increase).

The model lease permits the owner to require the tenant to pay Market Rent after termination of the subsidy.

(iii) *Entering Into an Unassisted Lease.* The owner and tenant may enter into a new lease without financial assistance. Unlike the other procedures for termination of subsidy, the creation of a new unassisted lease requires the agreement of the tenant.

(b) *Termination of Tenancy.*—(i) *Cause for Termination of Tenancy.* Under existing regulatory and lease requirements for termination of tenancy, an owner may terminate the tenancy under an assisted lease for *"material non-compliance"* with the lease, or for *"other good cause"*. There are similar provisions in other Section 8 program rules). Under the HUD model lease (HUD Handbook 4350.3, Appendix 19a), the lease automatically renews for successive periodic terms unless the lease is terminated by the owner for material non-compliance or other good cause.

This proposed rule would not change the regulatory grounds for termination of the assisted tenancy. Failure by the family to submit (or to receive verification of, as appropriate) required evidence of citizenship or eligible immigration status would be a material violation of the assisted lease, and also "other good cause" for termination of tenancy. The bases for this conclusion are discussed below.

Failure to provide evidence of citizenship or eligible immigration status would constitute a material violation of the assisted lease. The tenant is obligated to supply information to the owner bearing on family eligibility or family composition in accordance with HUD requirements. The HUD model lease provides that at the regular recertification the tenant must report "composition of the Tenant's household" and "supply any other information required by HUD" to set the amount of the assistance payment. Similar provisions are contained in other program leases.

Under the proposed rule, the tenant would be required to supply evidence of citizenship or eligible immigration status at annual reexamination. Failure to supply evidence of citizenship or eligible immigration status would constitute material noncompliance with the tenant's duty under the lease to furnish information on family composition as required by HUD. The failure is material since the information is needed for the owner to determine statutory and regulatory eligibility for further assistance under the lease. The requirement for submission of the required evidence therefore goes to the heart of the assisted tenancy, the ability to continue the flow of subsidy for the family.

To emphasize the family's duty under the lease to furnish evidence of family composition pertaining to Section 214 eligibility, the proposed rule would amend the termination of tenancy provisions to state explicitly that:

> Failure of the family to timely submit all required information on family income and composition (*including required evidence of*

citizenship or eligible immigration status) will constitute a substantial violation of the lease. (Emphasis added.)

A family's failure to supply required evidence of citizenship or eligible immigration status also would be "other good cause" for termination of the tenancy under an assisted lease. As in the case of a failure to comply with the family's obligations under the lease, the inability or other failure to show eligibility for assistance constitutes non-compliance with a central requirement of the assisted tenancy, and the failure is therefore "other good cause" for termination.

(ii) *Continuation of Assistance During Eviction Process.*The rule would authorize the continuation of subsidy in the form of rent supplement payments, Section 236 rental assistance payments and Section 8 housing assistance payments during the time needed by the owner to evict a tenant occupying a unit under an assisted lease.

The owner must act in accordance with HUD regulations and other requirements for termination of tenancy. If the owner is taking the required actions to terminate tenancy and to evict the tenant, rent supplement payments, Section 236 rental assistance payments or Section 8 housing assistance payments:

> Shall continue * * * in accordance with the applicable assistance contract during occupancy of the dwelling unit by the tenant under the lease. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings, or may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

Thus, while the owner is under a broader regulatory obligation to proceed "promptly" with the termination of assistance (whether by eviction or termination of assisted occupancy), the regulation establishes a separate standard of diligence for the prosecution of eviction proceedings. As a condition for continuation of housing assistance, the owner must diligently pursue action for eviction in accordance with the regulatory standard.

The provision for continuation of assistance payments to the owner during eviction would not apply if the owner has not complied with the duty to obtain from the family, and to undertake verification of required evidence of citizenship or eligible immigration status.

c. *Occupancy of Unit After Termination of Assistance.* In the Section 236 rental programs, the project owner should attempt to lease units for which a tenant-based subsidy is available to families eligible for subsidy. However, if a tenant becomes ineligible for subsidy whether because of a lengthy period of being above the eligible income category or because of ineligible immigration status, there is no requirement that the family be evicted. After termination of subsidy, the owner and tenant are free to lease the unit without subsidy, and when that tenant vacates the unit, the usual rule concerning owner efforts to lease to a family eligible for subsidy applies.

For the Section 8 New Construction and Substantial Rehabilitation programs, there is a statutory requirement (formerly at section 8(b)(2) of the U.S. Housing Act of 1937) that during the term of the assistance contract the owner must make available for occupancy by eligible families the number of units for which assistance is committed under the contract (Pub. L. 97–35, August 13, 1981, Housing and Community Development (HCD) Amendments of 1981, section 325(1), amending section 8(b)(2) of the U.S. Housing Act of 1937). This statutory requirement ("100 percent occupancy requirement") applies to assistance contracts entered into after October 1, 1981. It was applied by regulation to all units in Section 8 New Construction, Substantial Rehabilitation, and Loan Management and Property Disposition Set-aside projects for which assistance contracts were executed after October 1, 1981, and in projects financed with Section 202 loans committed since October 1, 1981. (*See* §§ 880.504, 881.504, 886.129, and 886.329.)

That rule permits continued occupancy by a family that was *ineligible* for Section 8 assistance at the time the unit was leased only if the family was admitted before October 3, 1984, the effective date of the 100 percent occupancy rule. That rule implicitly would have required eviction of market rate tenants admitted after October 3, 1984. To clarify the status of tenants who become ineligible as a result of section 214, this rule would add a new provision to permit continued occupancy of the unit by a family that was eligible for assistance at the time of leasing, but where assistance has been terminated in compliance with the requirements of section 214. Once the Section 8 subsidy has been terminated, the proposed rule would apply the same two basis regulatory policies as are applied to the Section 236 programs:

(1) The owner may allow continued occupancy of the unit by the family without HUD assistance;

(2) When the original family that is ineligible for assistance vacates the unit, the owner must make the unit available for occupancy by an eligible family in accordance with existing rule provisions. Eligibility would entail satisfaction of section 214 requirements, as well as the requirement for income eligibility.

In its enforcement of section 214, the Department does not intend to deny an ineligible family the opportunity to stay in the unit, so long as the housing subsidy is not being paid. The regulatory policy in this context is consistent with the broader policy of the proposed rule, which would allow continued occupancy of a unit after termination of assistance.

I. Special Treatment of Families in Occupancy

The 1987 Housing Act amended section 214 to add a paragraph concerning the preservation of families that is applicable to any family with an ineligible individual who was receiving assistance on the date of enactment (which, for purposes of this rule, covers such individuals receiving the benefit of assistance on the effective date of the final HUD alien rule, as discussed above).

1. Continuation of Assistance or Deferral of Termination

a. *Continuation of Assistance.* Section 214(c)(1)(A) confers discretion on PHAs and the Secretary of HUD to continue assistance indefinitely to a family *whose head of household or spouse does have eligible status* but that also contains at least one person who lacks eligible status ("mixed family"), if continuation of assistance is necessary to "avoid the division of (the) family". For purposes of determining who qualifies as the family whose division is to be avoided, the 1987 Housing Act provides a definition of "family": A head of household, any spouse, any parents of the head of household or the spouse, and any children of the head of household or spouse. This type of determination is made just once, and thereafter, at regular reexaminations, the responsible entity need not require evidence of eligible immigration status of the individual in occupancy on the effective date of the final rule who admittedly is not in eligible immigration status.

This provision for continued assistance for these families was added to the 1987 housing bill as a compromise after the issuance of the Conference Report (H. Rep. 426, 100th Cong., 1st Sess., November 6, 1987). It was viewed as a limited exception to the overall prohibition against providing assistance to persons with ineligible immigration status, adopted in support of "the sanctity of the family." (See remarks of

Sen. William Armstrong, 133 Cong. Rec. S18615 (daily ed. December 21, 1987).) Since the issue of treatment of mixed families was considered by Congress in this latest enactment, and since the statute does not provide discretion to continue assistance for the type of mixed family in which neither the head of household or spouse is eligible but a child is a citizen or eligible alien, the only type of relief available to that type of family in occupancy when the rule becomes effective is the temporary deferral of termination, discussed below, which is also specifically authorized by the 1987 Act.

b. *Temporary Deferral of Termination.* Section 214(c)(1)(B) confers similar discretion to grant temporary deferral of termination with respect to any family containing an ineligible individual "if necessary to permit the orderly transition of the individual and any famiy members involved to other affordable housing." This temporary deferral is to be for six months, with subsequent renewals permitted for six months each, for a total deferral period of not to exceed three years. (See §§ 200.187, 812.10, and 912.10 for these provisions).

2. Use of Discretion

The statute confers the discretion on PHAs for the public housing program and the Section 8 programs, and on HUD for all other programs. Consequently, in Part 912, the rule governing the public and Indian housing programs (administered solely by PHAs), the language is very general—allowing each PHA the latitude to determine in what situations it will exercise its discretion to allow an ineligible individual to remain in occupancy. However, it does require a PHA to adopt policies and guidelines for exercising its discretion.

In the case of Section 8 programs administered by PHAs—the Certificate, Housing Voucher, and Moderate Rehabilitation programs—PHAs are given similar latitude under Part 812. Section 8 programs administered by private owners have more specific directions about when to exercise discretion in favor of an ineligible individual. In order for the individual and family members to benefit from an exercise of discretion to permit continued assistance or deferral of termination, the family must demonstrate that it is unable to find other affordable housing of appropriate size. In the case of deferral of termination, the rule also provides that the project owner must make the determination of the availability of affordable housing in sufficient time before the end of each deferral period so that the tenant can be advised, at least 60 days in advance of the expiration of the deferral period, whether or not the termination will be deferred again. Recognizing that a tenant's status may change favorably, the rule provides that the tenant may establish eligible status in the future, which may result either in being determined fully eligible (if all family members are also eligible) or being determined eligible for indefinite continuation of assistance as a "mixed family."

This proposed rule also provides that when a determination is made to defer termination of financial assistance temporarily because of the lack of affordable housing, the project owner must inform the tenant of his or her ineligibility for financial assistance and offer the tenant help in finding other affordable housing. This help may include any or all of the following: Provision of a list of housing projects assisted under Federal programs not covered by section 214 of the Housing and Community Development Act of 1980 (Section 221(d)(3) Below Market Interest Rate and Section 202 direct loans for projects for elderly or handicapped—if no Section 8 assistance is involved), and any projects assisted under State or local programs; referral to a local housing counseling agency; and referral to a social welfare organization.

If an owner decides under this provision neither to continue assistance nor to defer termination of assistance to a family that has been determined to lack eligible status, this rule requires that the family be informed of the decision in writing, with reasons for the determination, and that the family be offered an opportunity to meet with a representative of the PHA or owner to discuss the decision, in accordance with HUD requirements. At this meeting a family could provide information about whether it qualifies as a "mixed family" and whether there is other affordable housing available that could serve the entire family.

3. Procedure

The statute provides that PHAs and project owners are to exercise discretion after completion of the applicable fair hearing process, when it has been determined that assistance is to be terminated. HUD has interpreted this procedural prerequisite for the exercise of discretion to mean that this decision can only be made after the PHA or project owner has afforded the participant every opportunity to demonstrate eligible status. Therefore, if the participant has conceded at an early stage that an individual residing in the unit lacks eligible status, the PHA or project owner need not conduct a hearing on that issue before determining whether to continue assistance indefinitely or to defer termination of assistance temporarily. Of course, if a hearing is conducted on the issue of whether the participant has eligible status, it also may be used to determine whether the family should be afforded relief under the family preservation provisions.

J. Prohibition Against Assistance to Nonimmigrant Student Aliens

One other provision of the new paragraph (c) of section 214 is a directive that under no circumstances are nonimmigrant student aliens to be given the benefit of financial assistance under the programs covered by section 214. Since nonimmigrants are not included in any of the categories of aliens eligible under section 214, nonimmigrant student aliens are generally ineligible for financial assistance. Therefore, the effect of this specific statutory directive is to disqualify nonimmigrant students and their families from the discretionary continuation of assistance and temporary deferral of termination provisions. See §§ 200.188, 812.11, and 912.11.

For example, if a nonimmigrant student alien came to the United States and then married a U.S. citizen, and they were residing in an assisted dwelling unit on the effective date of the final rule, financial assistance could not be continued on behalf of the nonimmigrant student alien, despite the fact that the family might otherwise qualify as a "mixed family." (Were the nonimmigrant student to vacate the unit, the spouse and any children born in the United States would be eligible to remain.) Such a family also would be ineligible for deferral of termination of assistance, because the family contained a nonimmigrant student alien.

If a nonimmigrant student who is married came to the United States as a student under the appropriate documentation, had children who were born in the United States, and was residing with his or her family in an assisted dwelling unit on the effective date of the final rule, that family would be ineligible for temporary deferral of termination of assistance. (The student and any spouse or children who accompany or follow to join the student are all considered to be nonimmigrant student aliens under the statutory definition.)

K. Protection From Liability for Project Owners; Local/State Agencies and Officials

Under the proposed rule, the responsible entity's decision to make an individual eligible for financial assistance based on citizenship or eligible immigration status will not result in any monetary set-off or regulatory action by HUD if the responsible entity properly follows the procedures established under both the 1987 Housing Act and IRCA.

This would require that, before the responsible entity could find an individual to be in an eligible status, proper evidence must be submitted and verified with the INS. (This would encompass both primary and secondary verification, as appropriate.)

A project owner or responsible entity would also not be liable to HUD for any monetary setoff or regulatory action because: (1) It provided an opportunity to applicants and tenants to submit evidence of citizenship or eligible immigration status, or because it provided an opportunity to obtain secondary verification of eligible immigration status; (2) it was required to wait for a response from the INS following the request for secondary verification; or (3) it provided the fair hearing established under this proposed rule.

With regard to State and local agencies and officials, the 1987 Housing Act provides that these entities are immune from liability—to HUD or to outside third parties—for the design and implementation of the "Federal verification system." This verification system encompasses the document submission and verification requirements established in this proposed rule, the fair hearing procedure, as well as the authority to deny or terminate assistance based upon a failure to establish eligible immigration status through the INS system.

However, it should be noted that immunity from liability under this section attaches only if the State or local agency or official implements the verification system in accordance with prescribed Federal rules and regulations. The entity's failure to follow such requirements may result in liability, not only to HUD but also to third parties who are directly injured by the omission.

VI. Findings and Certifications

A. Impact on the Economy

This rule does not constitute a "major rule" as that term is defined in section 1(b) of Executive Order 12291 on Federal Regulations issued by the President on February 17, 1981. Analysis of the rule indicates that it does not: (1) Have an annual effect on the economy of $100 million or more; (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State or local government, agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United State-based enterprises to compete with foreign-based enterprises in domestic or export markets.

B. Regulatory Agenda

This rule was listed as item number 884 in the Department's Semiannual Agenda of Regulations published on April 25, 1988 (53 FR 13854, 13864), under Executive Order 12291 and the Regulatory Flexibility Act.

C. Impact on Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), the Department is required to consider whether a rule has a significant economic impact on a substantial number of small entities, and if so, whether the method of implementing the objective avoids imposing a disproportionate impact on them. This rule will have only a minimal impact on small housing project owners, small mortgages and small public housing agencies (PHAs), since the requirement of section 214 of the Housing and Community Development Act of 1980, as amended, that the Secretary not make financial assistance available to persons who are not United States citizens or eligible aliens, is being implemented by requiring owners and PHAs to use an easily accessible (by telephone) automated system for verifying immigration status. The Department expects to be able to arrange for the cost of this verification system, established by the Immigration and Naturalization Service, to be billed directly to HUD, so that there will be no additional direct cost associated with verification of immigration status. The only other element of cost or delay in administration of HUD programs to be encountered by small entities as a result of this rule is the requirement for a fair hearing, on request, for any applicant or tenant found to be ineligible. This procedure is specifically required by section 214, so the rule must require all entities administering the affected programs to provide this hearing. Therefore, the Undersigned concludes that the economic impact on a substantial number of small entities has been minimized to the extent possible, consistent with the Secretary's responsibilities under section 214.

D. Environmental Review

Under the National Environmental Policy Act (NEPA) (42 U.S.C. 4321–4347) and implementing regulations (24 CFR Part 50), the Department is required to consider the impact of policy level actions such as development of regulations unless the subject matter is categorically excluded from coverage. Although one of the programs covered by this rule, the Section 8 Certificate program, is categorically excluded, the other programs are not. Consequently, HUD has prepared an environmental assessment of the effects of this proposed rule and has issued a Finding of No Significant Impact, which is available for public inspection and copying during regular business hours in the Office of General Counsel, Rules Docket Clerk, Room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

E. Paperwork Reduction Act

Information collection requirements contained in §§ 200.183, 200.185, 200.186, 200.187, 235.13, 812.6, 812.8, 812.9, 812.10, 912.6, 912.8, 912.9, and 912.10 have been submitted to OMB for approval under the Paperwork Reduction Act of 1980, 44 U.S.C. 3504(h), and have been assigned OMB control numbers 2502–0356 and 2577–0093. In accordance with OMB regulations codified at 5 CFR 1320.13 and 1320.15, the following chart is provided to describe the collection of information requirements.

TABULATION OF ANNUAL REPORTING BURDEN PROPOSED RULE—RESTRICTION ON USE OF ASSISTED HOUSING BY ALIENS

Description of information collection	Section of 24 CFR affected	Number of respondents	Number of responses per respondents	Total annual responses	Hours per response	Total hours
Notification to tenants and applicants in Public and Indian Housing (2577-0093).	912.6(b), 912.9, 912.10	3,300	700	2,310,000	.01	23,100
Denials, Terminations, Extensions Deferrals (2577-0093)	912.9, 912.10	3,300	19	62,700	.10 (6 minutes)	6,270
Notification and Verification, Denial, Termination in Section 8 (2502-0356).	812.6(b), 812.9, 812.10	2,470,777	1	2,470,777	.05 (3 minutes)	123,539
Notification and Verification, Denial, Termination in FHA subsidized (2502-0356).	200.183, 200.186 200.187, 235.13 (e) & (f).	412,315	1	412,315	.05	20,616
Extensions (2502-0356)	812.9(d), 200.185(d)	144,155	1	144,155	.16 (10 minutes)	23,065
Recordkeeping in Public and Indian Housing (2577-0093)	912.6, 912.8, 912.9(c), 912.10.	3,300	761	2,511,300	.01	25,113
Recordkeeping in Section 8 (2502-0356)	812.6, 812.8 812.9(c), 812.10.	2,470,777	1	2,470,777	.05	125,539
Recordkeeping in FHA subsidized (2502-0356)	200.183, 200.186(c) 200.185, 200.187, 235.13 (e) & (f).	412,315	1	412,315	.05	20,616
Total annual burden						450,458

List of Subjects

24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Loan programs: Housing and community development, Minimum property standards, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements.

24 CFR Part 215

Grant Programs: Housing and community development, Rent subsidies.

24 CFR Part 235

Condominiums, Cooperatives, Grant programs: housing and community development, Homeownership, Low and moderate income housing, Mortgage insurance.

24 CFR Part 236

Low and moderate income housing mortgage insurance, projects, Rent subsidies, Taxes, Utilities.

24 CFR Part 247

Low and moderate income housing, Public housing, Tenant eviction.

24 CFR Part 812

Low and moderate income housing.

24 CFR Part 850

Grant programs: Housing and community development, Relocation assistance, Rental housing, Low and moderate income housing, Cooperatives.

24 CFR Part 880

Grant programs: Housing and community development, Low and moderate income housing, New construction, Rent subsidies.

24 CFR Part 881

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 882

Grant programs: Housing and community development, Housing, Low and moderate income housing, Mobile homes, Rent subsidies.

24 CFR Part 883

Grant programs: Housing and community development, Low and moderate income housing, New construction and substantial rehabilitation, Rent subsidies.

24 CFR Part 884

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies, Rural areas.

24 CFR Part 886

Grant programs: Housing and community development, Low and moderate income housing, Rent subsidies.

24 CFR Part 900

Grant programs: Housing and community development, Rent subsidies.

24 CFR Part 904

Grant programs: Housing and community development, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 905

Grant programs: Housing and community development, Grant programs: Indians, Indians, Low and moderate income housing, Public housing, Homeownership.

24 CFR Part 912

Low and moderate income housing.

24 CFR Part 960

Public housing.

Accordingly, the Department proposes to amend 24 CFR Parts 200, 215, 235, 236, 247, 812, 850, 880, 881, 882, 883, 884, 886, 900, 904, 905, 912, and 960, as follows:

PART 200—INTRODUCTION

1. The authority citation for Part 200 would be revised to read as follows:

Authority: Titles I and II, National Housing Act (12 U.S.C. 1701–1715z–18) and sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Subpart G is also issued under sec. 214, Housing and Community Development Act of 1980, as amended (42 U.S.C. 1436a).

2. A new Subpart G would be added, to read as follows:

Subpart G—Restriction on Use of Assisted Housing by Aliens

Sec.

200.180 Applicability.
200.181 Definitions.
200.182 Eligible status.
200.183 Submission of evidence of eligible status.
200.184 Documents of eligible immigration status.
200.185 Verification of eligible immigration status.

Sec.

200.186 Denial of termination of assistance.
200.187 Special provisions for preservation of mixed families and other families in occupancy on [*effective date of the final rule*].
200.188 Specific prohibiton of assistance to nonimmigrant student aliens.
200.189 Protection from liability for project owners, mortgagees, State and local agencies and officials.

Subpart G—Restriction on Use of Assisted Housing by Aliens

§ 200.180 Applicability.

(a) This subpart, which implements the statutory prohibition on providing financial assistance to benefit individuals who are not in eligible status with respect to citizenship or alien status, is applicable to financial assistance provided under section 235 of the National Housing Act (12 U.S.C. 1715z), section 236 of the National Housing Act (12 U.S.C. 1715z–1) (tenants paying below market rent only), or section 101 of the Housing and Urban Development Act of 1965 (12 U.S.C. 1701s).

(b) Financial assistance is considered to be paid under Section 235 program on behalf of a mortgagor when the dwelling unit is subject to a mortgage insured under section 235 of the National Housing Act (and Part 235 of this chapter), and assistance payments are made to the mortgagee on behalf of the mortgagor under a contract between the mortgagee and the Secretary in accordance with section 235(b) of the National Housing Act.

(c) Financial assistance is considered to be paid under Section 236 program on behalf of a tenant or cooperative unit purchaser when the project is subject to a mortgage insured or is assisted under section 236 of the National Housing Act (and Part 236 of this chapter) for which interest reduction payments are paid under a contract between the mortgagee and the Secretary *and* the monthly rental charge paid to the owner for the dwelling unit is less than the HUD-approved market rent, whether or not rental assistance payments are also paid under a contract in accordance with section 236(f)(2) and Part 236, Subpart D, of this chapter.

(d) Financial assistance is considered to be paid under the Rent Supplement program administered under section 101 of the Housing and Urban Development Act of 1965 when rent supplement payments are paid under a contract between the project owner and the Secretary in accordance with that section and Part 215 of this chapter.

§ 200.181 Definitions.

Assisted dwelling unit. A dwelling unit for which financial assistance is considered to be paid, as determined in accordance with § 200.180.

Citizen. A citizen or national of the United States.

Evidence of citizenship or eligible immigration status ("evidence"). This term refers to the documents which must be submitted in accordance with § 200.183 for any individual who is or will be occupying an assisted dwelling unit.

(a) For U.S. citizens, the evidence consists of:

(1) A signed declaration of U.S. citizenship (§ 200.183(a)(1)(i));

(2) A signed verification consent form (§ 200.183(a)(2)); and

(3) If the project owner suspects a fraudulent declaration, documentation of citizenship submitted in accordance with § 200.185(b).

(b) For aliens, the evidence consists of:

(1) A signed declaration of eligible immigration status (§ 200.183(a)(1)(ii));

(2) The INS documents described in § 200.184(a); and

(3) A signed verification consent form (§ 200.183(a)(2)).

Financial assistance. See discussion in § 200.180.

HUD. The U.S. Department of Housing and Urban Development.

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Project owner. The person or entity that owns the housing project containing the assisted dwelling unit. For purposes of this subpart, this term includes the mortgagee, in the case of a Section 235 mortgage.

Tenant. For the Rent Supplement program and the Section 236 program, an individual or a family renting an assisted dwelling unit or occupying such a dwelling unit as a cooperative member. For purposes of simplifying the language in this subpart to include the Section 235 homeownership program, the term tenant will also be used to include a homebuyer, where appropriate.

§ 200.182 Eligible status.

(a) Financial assistance under the programs covered by this subpart is restricted to individuals who are United States citizens, as defined in § 200.181, or aliens who qualify as one of the following:

(1) An alien lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants);

(2) An alien who entered the United States before January 1, 1972, or such later date as enacted by law, who has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(4) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(5) an alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(6) an alien lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (pre-1982 legalization).

(b) for a family to be eligible for financial assistance, as described in § 200.180, every member of the family residing in the unit must be determined to have eligible status, as described in paragraph (a) of this section.

§ 200.183 Submission of evidence of eligible status.

(a) *Evidence of citizenship or eligible immigration status.* As a condition to financial assistance being provided, an applicant or tenant must submit the following materials to the project owner with respect to any individual, regardless of age, who is or will be an occupant of the assisted dwelling unit:

(1) *Declaration.* A written declaration signed, under penalty of perjury, by the adult for whom the declaration is submitted. In the case of a child, the

declaration must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The declaration must certify whether the individual:

(i) Is a citizen;

(ii) Is an alien with eligible immigration status, as described in § 200.182; or

(iii) Was 62 years of age or older and receiving HUD financial assistance on [the effective date of the final rule].

(2) *Consent form.* A verification consent form signed by the adult for whom the form is submitted. In the case of a child, the form must be signed and sumbitted by an adult residing in the assisted dwelling unit who is responsible for the child. The consent form shall provide that:

(i) Any evidence submitted by the individual may be released by the project owner to HUD.

(ii) Such evidence may be released by the project owner to a Federal, State, or local agency for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, or investigation or prosecution of fraud in connection with any Federal housing assistance program as permitted under applicable State or local laws concerning the protection of personal privacy.

(iii) HUD may release the evidence or other information to any Federal, State, or local government agency (including the Social Security Administration and the Immigration and Naturalization Service) for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, and investigation or prosecution of fraud in connection with any Federal housing assistance program, as permitted by the Privacy Act of 1974, 5 U.S.C. 552a. Information released to the Immigration and Naturalization Service may be used in deportation proceedings. Information may also be released by HUD as permitted by the Freedom of Information Act, 5 U.S.C. 552. HUD is not responsible for the further use or transmission of the information by the entity receiving it.

(3) *Documentation.* The following documentation requirements apply, based on the type of declaration submitted in accordance with paragraph (a)(1) of this section:

(i) Individuals declaring that they are in an eligible immigration status are required to submit evidence of such status as specified in § 200.184.

(ii) Individuals declaring that they were 62 years of age or older and receiving HUD financial assistance on [the effective date of the final rule] are required to submit proof of age in accordance with HUD requirements.

(iii) Individuals declaring that they are U.S. citizens are *not* required to submit documentation of citizenship, except when the project owner has reason to suspect that the individual has submitted a fraudulent declaration of citizenship, and then only in accordance with the requirements of paragraph (a)(4) of this section.

(4) *Procedures when fraud suspected with respect to citizenship.* (i) A project owner has reason to suspect that a declaration of citizenship submitted by an applicant or tenant is fraudulent if:

(A) In verifying the applicant's or tenant's eligibility for financial assistance, the project owner discovers conflicting or inconsistent information reegarding the identity or claimed citizenship or eligible immigration status of the applicant or tenant; or

(B) The project owner is informed that the applicant's or tenant's claimed citizenship or eligible immigration status is fraudulent. Such information must be corroborated by documentation such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

(ii) When a project owner has reason to suspect that an applicant or tenant has submitted a fraudulent declaration of citizenship under § 200.183, the owner shall require the applicant or tenant to submit documentation of citizenship. If the documentation fails to establish citizenship, as specified under HUD requirements, the owner shall deny or terminate assistance in accordance with § 200.186 or § 235.13(e). Where an individual has received the benefit of a substantial amount of HUD financial assistance to which he or she was not entitled because the individual intentionally misrepresented eligibility on the basis of citizenship and recovery of the funds cannot be achieved by administrative action, the project owner may refer the case to the HUD Regional Inspector General's (IG's) office for further investigation. Possible criminal prosecution may follow, based on the False Statements Act, 18 U.S.C. 1001 and 1010.

(b) *Notice to applicants and tenants.*—(1) *Type of notice.* The project owner shall notify tenants and applicants (including applicants whose names are on a waiting list on [the effective date of the final rule]), that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence referred to in paragraph (a) of this section.

(i) *In the Rent Supplement and Section 236 programs,* an owner shall notify all applicants of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on [the effective date of the final rule] must also be notified of these requirements. Notification to tenants of the requirement to submit evidence shall coincide with the owner's regular tenant notice concerning verification of income.

(ii) *In the Section 235 program,* a mortgagee shall give notice of the requirement to submit evidence of citizenship or eligible immigration status to each applicant for financial assistance under Section 235 at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on [the effective date of the final rule] must also be notified by the mortgagee of these requirements. A mortgagor receiving Section 235 assistance must be notified of the requirement to submit evidence upon the occurrence of any of the events described in § 235.13(a). However, mortgagors already receiving assistance under contracts executed before [the effective date of the final rule] are not required to provide evidence of citizenship or eligible immigration status unless they seek a change in the terms of their assistance contracts.

(2) *form of notice.* A notice under this section of the requirement to submit evidence of citizenship or eligible immigration status shall describe the type of evidence that must be submitted and shall state when the evidence must be submitted. The notice shall be given in accordance with HUD requirements.

(c) *Recipient of evidence.* For financial assistance in the form of rent supplment payments or section 236 basic rent tenancy or rental assistance payments, the evidence shall be submitted by each applicant and tenant to the owner of the assisted dwelling unit. For financial assistance in the form of section 235 assistance payments, the evidence shall be sumbitted by each applicant and mortgagor to the mortgagee. The owner or mortgagee is responsible for administering the restrictions on providing assistance to persons who are not citizens or aliens with eligible immigration status, and shall exercise this responsibility in accordance with HUD requirements.

(d) *Failure to submit evidence.* Failure to submit required evidence of citizenship or eligible immigration status (except in the case of a Section 235 mortgagor whose assistance contract

was executed before [the effective date of the final rule]) shall result in denial or termination of financial assistance in accordance with the procedures of §§ 200.185 through 200.187.

(e) *Frequency of Evidence Submission Requirements.* (1) For financial assistance in the form of rent supplement payments or Section 236 basic rent tenancy or rental assistance payments, the tenant shall submit required evidence at regular and interim reexaminations, in accordance with the provisions of § 215.55 (a) and (b) and § 236.80 (a) and (b).

(2) For financial assistance in the form of Section 235 assistance payments, each applicant or mortgagor shall submit the required evidence upon occurrence of any of the events described in § 235.13(a).

(f) *One-time evidence requirement.* Submission of evidence that an occupant of the assisted dwelling unit is a citizen, or that as of [effective date of final rule] the occupant was 62 years of age or older and receiving HUD financial assistance, is only required one time during continuous assisted occupancy under any covered program.

§ 200.184 Documents of eligible immigration status.

The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 200.185:

(a) Form I–151 (issued before 1979), I–551, or AR–3a (issued during 1941–1949), Alien Registration Receipt Card (for permanent resident aliens);

(b) Form I–181B or passport, stamped "Processed for I–551, temporary evidence of lawful admission for permanent residence" (for permanent resident aliens);

(c) Form I–94, Arrival-Departure Record, annotated with one of the following:

(1) "Section 207" or "Refugee";

(2) "Section 208" or "Asylum"; or

(3) "Section 243(h)" or "Deportation stayed by Attorney General";

(d) Form I–94, Arrival-Departure Record—Parole Edition, annotated with one of the following:

(1) "Section 212(d)(5)" or "Admitted at Attorney General Discretion";

(2) "Conditional Entry" or "Section 203(a)(7)" (before April 1, 1980);

(e) Form I–688, Temporary Resident Card, or I–688A, Employment Authorization (both of which documents expire), either of which must be annotated "Section 245A";

(f) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(g) Any other document specified by HUD in a notice published in the Federal Register.

§ 200.185 Verification of eligible immigration status.

(a) *General procedures.* After notice of the requirement to submit evidence is provided to an applicant or tenant under § 200.183(b), the project owner shall continue to process an applicant for purposes of establishing eligibility for financial assistance without regard to immigration status, if the applicant otherwise qualifies for such assistance. In addition, the project owner shall verify the immigration status of aliens as follows:

(1) *Primary verification.* (i) Primary verification of the immigration status of applicants and tenants with the Immigration and Naturalization Service (INS) is conducted by means of an automated system that provides access to alien names, file numbers and admission numbers.

(ii) The INS document submitted by the applicant or tenant to establish eligible immigration status must contain a photograph, or the project owner shall request another document bearing a photograph to ensure the identity of the alien.

(iii) The project owner shall not deny or terminate financial assistance to an applicant or tenant on the basis of immigration status if the primary verification system indicates that the applicant or tenant has eligible immigration status.

(2) *Secondary verification* (Appeal). (i) Secondary verification provides an appeal of the primary verification determination through a manual search of INS alien files. A project owner institutes secondard verification by forwarding photographs of the original INS documents listed at § 200.184 (front and back), attached to Document Verification Request Form G–845, to a designated INS field office for review.

(ii) The project owner shall promptly institute secondary verification whenever:

(A) Primary verification is either unavailable to, or not feasible for use by, the project owner;

(B) Primary verification instructs the project owner to institute secondary verification;

(C) Primary verification is unable to verify the immigration status of the applicant or tenant;

(D) Documents are submitted by the applicant or tenant that indicate immigration status, but do not contain an "A-number"; or

(E) An INS receipt is submitted as documentation.

(iii) Pending the outcomne of secondary verification under paragraph (a)(2)(ii) of this section, the project owner is required to:

(A) Continue to process the applicant for purposes of establishing eligibility for financial assistance, if the applicant otherwise qualifies for such assistance. Financial assistance may not, however, be provided to any applicant until eligible immigration status is verified through the INS. In cases where eligibility for financial assistance is established prior to the verification of eligible immigration status, the project owner shall place the applicant's name on any waiting list and shall allow the applicant to accrue priority on the list pending the verification determination.

(B) Continue to provide financial assistance to any tenant without regard to immigration status, if the tenant otherwise qualifies for such assistance.

(b) *Liability of project owner for INS verification.* The project owner shall not be liable for any action, delay, or failure of the INS to conduct the automated or manual verification referred to in paragraphs (a) (1) and (2) of this section.

§ 200.186 Denial or termination of assistance.

(a) *Applicability.* This section is applicable to financial assistance in the form of rent supplement payments or Section 236 basic rent tenancy or rental assistance payments (tenants paying below market rent only). (See § 235.13(e) for relevant language pertaining to the Section 235 homeownership assistance program).

(b) *Denial of assistance.* The owner shall not admit an application for participation in the rent supplement or Section 236 below market rent programs, or commence any new form of financial assistance for a current tenant, unless evidence of citizenship or eligible immigration status has been submitted to the owner and verified in accordance with § 200.185.

(c) *Procedural requirements—denial of assistance.*—(1) *Notice.* If the applicant fails to submit evidence of citizenship (see § 200.183(a)) or eligible immigration status (see § 200.183(b)), or if the INS verification system under § 200.185 establishes that the applicant does not have eligible immigration status, the owner shall:

(i) Inform the applicant in writing that his or her application for financial assistance is denied, and provide a brief

statement of the reasons for the denial of assistance; and

(ii) Inform the applicant that he or she has a right to request an informal hearing (under § 200.186(c)(2)) within 14 days of the date of the owner's notice of ineligibility.

(2) *Informal hearing.* (i) Upon timely request for an informal hearing, the applicant shall have an opportunity to:

(A) Meet with any person designated by the owner (including an officer or employee of the owner) other than a person who made or approved the decision under review or a subordinate of such person.

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status, as described in § 200.184. Evidence may be considered without regard to its admissibility under the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the applicant's own expense.

(ii) The owner shall provide the applicant with a written final decision within five days of the informal hearing, stating the basis for the decision.

(iii) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (c)(2) of this section.

(d) *Termination of Financial Assistance (including Eviction).*—(1) *Termination events.* Upon the occurrence of any of the following events, financial assistance for the tenant shall terminate in accordance with the procedural requirements of paragraphs (d)(4) through (d)(6) of this section, and other HUD requirements:

(i) If, after notice under § 200.183 is provided of the duty to submit evidence of citizenship or eligible immigration status, the tenant fails to submit such evidence at annual reexamination;

(ii) If the tenant fails to obtain the owner's approval for occupancy of the assisted dwelling unit by an additional person for whom evidence of citizenship or eligible immigration status is required;

(iii) If the INS verification system described in § 200.185 establishes that the tenant does not have eligible status; or

(iv) If the owner has admitted a tenant with financial assistance, but the owner is subsequently informed by HUD, or otherwise determines, in accordance with § 200.185(b), that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(2) *When termination is not required.* (i) The owner may not terminate financial assistance if any person for whom required evidence has not been submitted by the tenant has moved from the assisted dwelling unit.

(ii) The owner may not terminate financial assistance if any person determined not to be in an eligible immigration status following verification under § 200.185 has moved from the assisted dwelling unit.

(iii) The owner may not terminate financial assistance if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the assisted dwelling unit.

(iv) Instead of terminating assistance when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination (i.e., for a new occupant), the project owner may grant an extension of time for submission of the required evidence.

(A) The project owner may, in its own discretion, grant an extension if:

(*1*) The tenant submits the declaration required under § 200.183(a), certifying that any person for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(*2*) The tenant promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under this paragraph (d)(2)(iv) shall be for a specific period needed to obtain the evidence. Where the tenant is required to submit the evidence at an annual reexamination, any extension(s) granted by the owner shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the tenant is required to request the owner's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the owner shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The owner's decision to grant an extension of time for the tenant to submit the evidence, and the owner's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The tenant shall not have any right to an extension, and the owner may revoke an extension if the tenant is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the tenant will be able to submit the evidence during the extension.

(D) If the tenant has not submitted the evidence by the end of the ninety-day extension, the owner shall promptly terminate financial assistance for the tenant by terminating the assisted tenancy in accordance with paragraphs (d)(4), (5) and (6) of this section. The owner's decision to grant an extension shall be in writing, and shall state the reasons for the owner's determination.

(v) The owner must consider permitting continued assistance or deferral of termination on behalf of an individual in occupancy on [the effective date of the final rule] under § 200.187.

(3) *Retention of financial assistance.* The owner may not receive or retain financial assistance paid for the benefit of a tenant if the owner extends assistance to an applicant or tenant in violation of the restriction specified in § 200.186(b). HUD may take other appropriate remedial action.

(4) *Notice of termination of assistance.* (i) Upon the occurrence of any of the events described in paragraph (d)(1) of this section, the owner shall:

(A) Inform the tenant in writing that the tenant's eligibility for financial assistance is terminated, and provide a brief statement of the reasons for the termination of assistance.

(B) Inform the tenant of the right to request an informal hearing within 14 days of the date of the owner's notice of ineligibility.

(ii) Financial assistance to a tenant may not be terminated until the conclusion of the informal hearing, and then only upon a determination that the alien is not in an eligible immigration status.

(5) *Informal hearing.* (i) Upon timely request for an informal hearing, the tenant shall have an opportunity to:

(A) Meet with any person(s) designated by the owner (including an officer or employee of the owner) other than a person who made or approved the decision under review or a subordinate of such person.

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status, as described in § 200.184. Evidence may be considered without regard to its admissibility under

the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the tenant's own expense.

(ii) The owner shall provide the tenant with a written determination within five days of the informal hearing, stating the basis for the decision.

(iii) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the tenant's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (d)(5) of this section.

(6) *Termination of assisted occupancy.* Upon occurrence of any of the events described in paragraph (d)(1) of this section, assisted occupancy is terminated by undertaking any of the following actions:

(i) If permitted under the lease, the owner may notify the tenant that because of such occurrence the tenant is required to pay the HUD-approved market rent for the dwelling unit. The notice shall be given in accordance with HUD requirements.

(ii) The owner may enter into a new lease without financial assistance.

(iii) The owner may evict the tenant. An owner may continue to receive assistance payments if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued in accordance with the terms of the lease, and if eviction of the tenant is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the tenant must be in accordance with Part 247 and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings.

(7) *Resumption of assistance.* When financial assistance for the tenant has been terminated in accordance with § 200.186(d), financial assistance for the tenant shall not resume unless:

(i) All required evidence has been submitted by the tenant and verified by the owner; and

(ii) Resumption of assistance is authorized in accordance with HUD requirements

§ 200.187 Special provisions for preservation of mixed families and other families in occupancy on [the effective date of the final rule].

(a) When a project owner would otherwise be required to terminate assistance because of the status of an individual who was receiving financial assistance on [*the effective date of the final rule*] (following the provision of a hearing in accordance with § 200.186, if requested), the project owner must consider whether the tenant qualifies for relief under this section.

(b) If the individual lacking eligible status, as described in § 200.182, is a member of a family in which the head of household or spouse has eligible status, the project owner must consider whether continued assistance is necessary to avoid division of the family. In making this determination, the project owner must consider only what is necessary to avoid division of the "family" consisting of the head of household, any spouse, and parents or children of the head of household or spouse. The decision to continue assistance on behalf of such an individual will be made once, and need not be reconsidered thereafter.

(1) If the tenant is receiving only minimal financial assistance and the project owner determines that the tenant could afford to continue occupancy in the dwelling unit without assistance, the project owner may determine that continued provision of financial assistance is not necessary to avoid the division of the family and may terminate assistance rather than to continue it under this section.

(2) If the tenant demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful, this evidence will be sufficient for the project owner to determine that continued financial assistance is necessary to avoid division of the family. In such a case, the project owner must continue to provide financial assistance under this section so long as the tenant satisfies other requirements of continued participation.

(3) If some members of the family do not qualify as members of the "family" that is not to be divided, as described above, financial assistance may be continued to the tenant under this section only if the persons not qualifying as "family" members move out of the unit within the period stated in the final determination of ineligible status.

(c) If financial assistance is not to be continued under paragraph (b) of this section, then the project owner must determine whether temporary deferral of the termination of financial assistance is necessary to permit the orderly transition of the ineligible individual and family members involved to other affordable housing. If such a deferral is warranted, it shall be for a six-month period. A deferral period may be renewed for an additional period of six months if warranted, but the aggregate deferral period may not exceed three years.

(1) The project owner will determine whether other affordable housing of appropriate size is available based on the owner's knowledge and on evidence of the tenant's efforts to locate such housing. If the determination is that additional time is needed for the family to make the transition to other affordable housing, the project owner will grant a deferral under this paragraph (c).

(2) At the beginning of each deferral period, the project owner must inform the tenant of his or her ineligibility for financial assistance and offer the tenant information and referrals to assist in finding other affordable housing.

(3) Before the end of each deferral period, the project owner must make a determination of the availability of affordable housing (based on the owner's knowledge and on evidence of the tenant's efforts to locate such housing) in sufficient time so that the tenant can be advised, at least 60 days in advance of the expiration of the deferral period, whether termination will be deferred again.

(4) If, during a deferral period, the status of the head of household or spouse changes and he or she is able to establish eligible status, the tenant either will be determined fully eligible (if all family members are also eligible) or will be considered for eligibility for indefinite continuation of financial assistance under paragraph (b) of this section.

(d) The project owner's determination of whether the tenant qualifies for relief under this section must be conveyed to the tenant in writing, stating the reasons for the decision if it is adverse to the tenant. If the project owner decides neither to continue assistance under paragraph (b) of this section nor to defer termination of financial assistance temporarily under paragraph (c) of this section on behalf of an individual who has been determined to lack eligible status, the project owner shall offer the tenant an opportunity to meet with a representative of the owner to discuss the decision, in accordance with HUD procedures.

§ 200.188 Specific prohibition of assistance to nonimmigrant student aliens.

The provisions of § 200.187, permitting continuation of assistance or deferral of termination of financial assistance for certain tenants, do not authorize relief with respect to any tenant who is determined to be a nonimmigrant student alien. For this purpose, a nonimmigrant student alien is defined as any alien who has a residence in a foreign country that such alien has no intention of abandoning; who is a bona fide student qualified to pursue a full course of study; and who is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and the alien spouse and minor children of any alien described above, if the spouse or children are accompanying such alien or following to join such alien.

§ 200.189 Protection from liability for project owners, mortgagees, State and local agencies and officials.

(a) *Protection from liability for project owners.* HUD shall not take any compliance, disallowance, penalty, or other regulatory action against a "project owner" (including a mortgagee) with respect to any error in its determination to make an individual eligible for financial assistance based on citizenship or immigration status:

(1) If the project owner established eligibility based upon a verification of eligible immigration status through the INS' primary or secondary verification system, as described in § 200.185;

(2) If the project owner was required to provide an opportunity for the applicant or tenant to submit evidence in accordance with § 200.183;

(3) If the project owner was required to wait for a response from the INS to the request for verification of eligible immigration status in accordance with § 200.185; or

(4) If the project owner was required to provide the informal hearing described in § 200.186.

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system under §§ 200.185 and 200.186, so long as the implementation by the State or local government agency or official is in accordance with prescribed HUD rules and regulations.

PART 215—RENT SUPPLEMENT PAYMENTS

3. The authority citation for Part 215 would continue to read as follows:

Authority: Sec. 101(g), HUD Act of 1965 (12 U.S.C. 1701s); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

4. In § 215.20, paragraph (b)(2) would be added to read as follows:

§ 215.20 Qualified tenant.

* * * * *

(b) * * *

(2) For restrictions on financial assistance to ineligible aliens, see Part 200, Subpart G.

5. In § 215.25, paragraph (a)(1) would be revised to read as follows:

§ 215.25 Determination of eligibility.

(a)(1) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner shall determine eligibility following procedures prescribed by the Commissioner. The requirements of Part 200, Subpart G, shall govern the submission and verification of information related to citizenship and eligible immigration status for applicants, as well as the applicable procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

6. Section 215.55 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding one sentence at the end of paragraph (c), to read as follows:

§ 215.55 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that subpart concerning verification of the immigration status of any tenant whose family contains a person who is not a citizen, as defined in Part 200, Subpart G, except for family members who are citizens or who were at least 62 years of age and receiving HUD financial assistance on [*the effective date of the final rule.*]

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except for the birth of a child), the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination of assistance.* * * * Where termination is based upon a determination that the tenant is not in an eligible immigration status, the procedures of Part 200, Subpart G shall apply.

7. A new § 215.80 would be added, to read as follows:

§ 215.80 Housing owner's obligation to determine eligible immigration status of applications and tenants; protection from liability.

(a) A housing owner is required to obtain and verify information regarding the citizenship or immediate status of applicants and tenants in accordance with the procedures of Part 200, Subpart G.

(b) HUD shall not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination that an individual is eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189.

PART 235—MORTGAGE INSURANCE AND ASSISTANCE PAYMENTS FOR HOME OWNERSHIP AND PROJECT REHABILITATION

8. The authority citation for Part 235 would continue to read as follows:

Authority: Secs. 211 and 235, National Housing Act (12 U.S.C. 1715b, 1715z); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

9. Section 235.2 would be amended by adding a new paragraph (f) to read as follows:

§ 235.2 Basic program outline.

* * * * *

(f) Evidence of citizenship or eligible immigration status must be submitted by the applicant or mortgagor and verified in accordance with Part 200, Subpart G, and § 235.13 of this part.

10. Section 235.10 would be amended by redesignating paragraphs (c) and (d) as paragraphs (d) and (e), adding a new paragraph (c) and (d)(2)(iii), and revising paragraph (d) introductory text, to read as follows (d)(2) introductory text is republished):

§ 235.10 Eligible mortgagors.

* * * * *

(c) Eligibility under this subpart also requires eligible status as determined in accordance with Part 200, Subpart G, with respect to citizenship or immigration status. (See § 235.13(a).)

(d) The mortgagor shall agree to recertify, on a form prescribed by the Secretary, as to occupancy, employment, family composition, income and citizenship or eligible immigration status in accordance with Part 200, Subpart G, whenever one of the following events takes place:

* * * * *

(2) No more than 30 days after:

* * * * *

(iii) A new member is added to the family who is not born in the United States.

* * * * *

11. A new § 235.13 would be added, to read as follows:

§ 235.13 Special requirements concerning citizenship or eligible immigration status.

(a) *Events requiring submission of information concerning eligible status.* A mortgagee must obtain information concerning an applicant or mortgagor's citizenship or eligible immigration status, in accordance with Part 200, Subpart G, at the following times:

(1) Application for assistance;

(2) Purchase of a cooperative membership;

(3) Assumption of a mortgage.

(4) Application for assistance or review of payment plan under the foreclosure avoidance program in accordance with Part 203, Subpart C (except with respect to a mortgagor whose assistance contract was executed before [the effective date of the final rule] and remains unchanged after that date); and

(5) Annual or other recertification of family income and composition required under § 235.10 or § 235.350 (except with respect to mortgagors whose assistance contracts were executed before [the effective date of the final rule] and remain unchanged after that date).

(b) *Certification by mortgagee.* When the mortgagee obtains the information required by paragraph (a) of this section, the mortgagee must certify to the Secretary that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable) for all persons for whom such evidence is required. If the mortgagee cannot make such a certification, the mortgagee shall notify the applicant or mortgagor of its ineligibility for financial assistance payments under this part.

(c) *Sanctions for invalid certification.* (1) (i) If the mortgagee has certified to the Secretary in accordance with paragraph (b) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), but the Secretary subsequently determines that the procedures required by Part 200, Subpart G, were not followed, the following actions will be taken:

(A) The mortgagee will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part; and

(B) No additional assistance payments may be made on behalf of the mortgagor.

(ii) However, the Secretary may permit the resumption of assistance payments if all members of the family whose status was not determined to be eligible have moved from the dwelling unit, or their status has been determined to be eligible, in accordance with Part 200, Subpart G.

(2) If the mortgagee has certified to the Secretary in accordance with paragraph (b) of this section that the required information concerning citizenship or eligible immigration status has been submitted and verified (if applicable), but the Secretary subsequently determines that the mortgagor's eligible status determination was based on fraudulent documents, or was otherwise defective, although the determination was made in accordance with required procedures, the following actions will be taken:

(i) The mortgagor will be required to repay to the Secretary the full amount of assistance payments made on behalf of the mortgagor under this part. The Secretary's right to repayment from the mortgagor under this paragraph shall not affect or limit the Secretary's right to refund of overpaid assistance payments from the mortgagee as provided in § 235.361(b); and

(ii) No additional assistance payments may be made on behalf of the mortgagor.

(d) *Mortgage insurance commitments.* Commitments to insure mortgages under this part will not be issued or extended unless the mortgagee has made the certification required under paragraph (b) of this section.

(e) *Denial of assistance.*—(1) *Notification procedure.* If the applicant fails to submit evidence of citizenship or eligible immigration status, as provided under § 235.13(a), or if the INS primary or secondary verification system under § 200.185 establishes that the applicant does not have eligible immigration status, the mortgagee shall:

(i) Inform the applicant in writing that his or her application for financial assistance is denied, and provide a brief statement of the reasons for the denial of assistance; and

(ii) Inform the applicant that he or she has a right to request an informal hearing (under § 235.13(e)(2)) within 14 days of the date of the mortgagee's notice of ineligibility.

(2) *Informal hearing procedures.* (i) Upon timely request for an informal hearing, the applicant shall have an opportunity to:

(A) Meet with any person(s) designated by the mortgagee, other than a person who made or approved the decision under review or a subordinate of such person (who may be an officer or employee of the mortgagee).

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status, as described in § 200.184. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the applicant's own expense.

(ii) The mortgagee shall provide the applicant with a written final decision within five days of the informal hearing, stating the basis for the decision.

(iii) The mortgagee must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the mortgagee's written determination following the informal hearing under paragraph (e)(2) of this section.

(f) *Termination of financial assistance.* (1) Following a final determination of ineligibility at the conclusion of the informal hearing, the mortgagee must promptly terminate financial assistance for the mortgagor in accordance with the procedural requirements of paragraph (f)(3) of this section upon the occurrence of any of the following events:

(i) If evidence of citizenship or eligible immigration status is not submitted by the mortgagor when required under § 235.13(a);

(ii) If the mortgagor fails to obtain the mortgagee's approval for occupancy of the assisted dwelling unit by an additional person for whom evidence of citizenship or eligible immigration status is required;

(iii) If the INS verification system described in § 200.185 establishes that the mortgagor does not have eligible immigration status; or

(iv) If the mortgagee has approved a mortgagor for financial assistance, but the mortgagee is subsequently informed by HUD or otherwise determines, in accordance with § 200.185(b), that the evidence of citizenship or eligible immigration status under § 200.183 was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(2) *When termination is not required.* (i) The mortgagee may not terminate financial assistance if any person form whom required evidence has not been submitted by the mortgagor has moved from the assisted dwelling unit.

(ii) The mortgagee may not terminate financial assistance if any person determined not to be in an eligible immigration status following verification under § 200.185 has moved from the assisted dwelling unit.

(iii) The mortgagee may not terminate financial assistance if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the assisted dwelling unit.

(iv) Instead of terminating assistance when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination, the mortgagee may grant an extension of time for submission of the required evidence.

(A) The mortgagee may, in its own discretion, grant an extension if:

(*1*) The mortgagor submits the declaration required under § 200.183(a), certifying that any person for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(*2*) The mortgagor promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under this paragraph (f)(2)(iv) shall be for a specific period needed to obtain the evidence. Where the mortgagor is required to submit the evidence at an annual reexamination, any extension(s) granted by the mortgagee shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the mortgagor is required to request the mortgagee's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the mortgagee shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The mortgagee's decision to grant an extension of time for the mortgagor to submit the evidence, and the mortgagee's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The mortgagor shall not have any right to an extension, and the mortgagee may revoke an extension if the mortgagor is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the mortgagor will be able to submit the evidence during the extension.

(D) If the mortgagor has not submitted the evidence by the end of the ninety-day extension, the mortgagee shall promptly terminate financial assistance for the mortgagor. The mortgagee's decision to grant an extension shall be in writing, and shall state the reasons for the mortgagee's determination.

(3) *Notice of termination of assistance.* Upon occurrence of any of the events described in paragraph (f)(1) of this section, the mortgagee shall:

(i) Inform the mortgagor in writing that the mortgagor's eligibility for financial assistance is terminated, and provide a brief statement of the reasons for the termination of assistance.

(ii) Inform the mortgagor of the right to request an informal hearing within 14 days of the date of the mortgagee's notice of ineligibility.

(iii) Financial assistance may not terminate until the conclusion of the informal hearing under paragraph (f)(4) of this section, and then only upon a determination that the mortgagor is not in an eligible immigration status.

(4) *Informal hearing procedures.* (i) Upon timely request for an information hearing, the mortgagor shall have an opportunity to:

(A) Meet with any person(s) designated by the mortgagee (including an officer or employee of the mortgagee) other than a person who made or approved the decision under review or a subordinate of such person.

(B) Submit evidence of citizenship (if required under § 200.185(b)), or of an INS determination of eligible immigration status. Evidence may be considered without regard to its admissibility under the rules of evidence applicable to judicial proceedings.

(C) Seek representation by an attorney, or other designee, at the mortgagor's own expense.

(ii) The mortgagee shall provide the mortgagor with a written determination within five days of the informal hearing, stating the basis for the decision.

(iii) The mortgagee must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the mortgagor's request for an informal hearing on the initial determination of ineligibility; and the mortgagee's written determination following the informal hearing under paragraph (f)(4) of this section.

(5) *Resumption of assistance.* When financial assistance for the mortgagor has been terminated in accordance with § 235.13(f), financial assistance shall not resume unless:

(i) All required evidence has been submitted by the mortgagor to the mortgagee; and

(ii) Resumption of assistance is authorized in accordance with HUD requirements.

(g) *Other related provisions.* See § 235.10 for eligibility requirements, including citizenship or eligible immigration status; § 235.350 for the mortgagor's required recertifications, including provision of information concerning eligible immigration status; and Part 200, Subpart G, for the general provisions on the subject of restrictions on providing assistance to aliens.

12. In § 235.325, a new paragraph (c) would be added, to read as follows:

§ 235.325 Qualified cooperative members.

* * * * *

(c) Eligibility as a cooperative member under this subpart also requires eligible status with respect to citizenship or eligible alien status, as determined in accordance with Part 200, Subpart G. (See § 235.13(a).)

13. In § 235.350, paragraph (a) introductory text would be revised and (a)(2)(iii) is added to read as follows ((a)(2) introductory text is republished):

§ 235.350 Mortgagor's required recertification.

(a) The mortgagee shall obtain from the homeowner (or from the cooperative association on behalf of the cooperative member), on a form prescribed by the Secretary a recertification as to occupancy, employment, family composition, and income (and citizenship or eligible immigration status in accordance with § 235.13(a) and Part 200, Subpart G), whenever one of the following events takes place:

* * * * *

(2) No more than 30 days after the mortgagee is notified by the mortgagor or learns from any identifiable source:

* * * * *

(iii) A new member is added to the family who is not born in the United States.

* * * * *

PART 236—MORTAGE INSURANCE AND INTEREST REDUCTION PAYMENTS FOR RENTAL PROJECTS

14. The authority citation for Part 236 would continue to read as follows:

Authority: Secs. 211 and 236, National Housing Act (12 U.S.C. 1715b and 1715z–1); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

15. In § 236.2, the definition of Qualified Tenant would be amended by adding a paragraph (c), to read as follows:

§ 236.2 Definitions.

Qualified Tenant. * * *

(c) For restrictions on eligibility for financial assistance to ineligible aliens, see Part 200, Subpart G.

16. In § 236.70, paragraph (a)(1) would be revised to read as follows:

§ 236.70 Occupancy requirements.

(a)(1) In the processing of applications for admission, the housing owner will determine eligibility following procedures prescribed by the Commissioner. The requirements of Part 200, Subpart G shall govern the submission and verification of information related to citizenship and eligible immigration status for those applicants who seek admission at a below market rent.

* * * * *

17. Section 236.80 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a sentence at the end of paragraph (c), to read as follows:

§ 236.80 Reexamination of income.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that subpart concerning verification of the immigration status of any tenant whose family contains a person who is not a citizen, as defined in Part 200, Subpart G, except for family members who are citizens or who were at least 62 years of age and receiving HUD financial assistance on [*the effective date of the final rule*].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except for the birth of a child), the owner must follow the requirements of Part 200, Subpart G, concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination of assistance.* * * * Where termination is based upon the tenant's failure to establish eligible immigration status, the procedures of Part 200, Subpart G, shall apply.

18. A new sentence would be added at the end of § 236.710, to read as follows:

§ 236.710 Qualified tenant.

* * * For restrictions on financial assistance to ineligible aliens, see Part 200, Subpart G.

19. In § 236.715, paragraph (a) would be revised to read as follows:

§ 236.715 Determination of eligibility.

(a) In the processing of applications for admission and in the processing of applications for assistance from tenants, the housing owner will determine eligibility following procedures prescribed by the Commissioner. The requirements of Part 200, Subpart G, shall govern the submission and verification of information related to citizenship and eligible immigration status for applicants, as well as the applicable procedures for denial of assistance based upon a failure to establish eligible immigration status.

* * * * *

20. A new § 236.765 would be added to read as follows:

§ 236.765 Housing owner's obligation to determine eligible immigration status of applicants and tenants; protection from liability.

(a) A housing owner is required to obtain and verify information regarding the citizenship or immigration status of applicants and tenants in accordance with the procedures of Part 200, Subpart G.

(b) HUD shall not take any compliance, disallowance, penalty or other regulatory action against a housing owner with respect to any error in its determination to make an individual eligible for financial assistance based upon citizenship or eligible immigration status, as provided in § 200.189.

PART 247—EVICTIONS FROM CERTAIN SUBSIDIZED AND HUD-OWNED PROJECTS

21. The authority citation for Part 247 would be revised to read as follows:

Authority: Sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

22. In § 247.3, paragraph (c) would be revised to read as follows:

§ 247.3 Entitlement of tenants to occupancy.

* * * * *

(c) *Material noncompliance.* The term "material noncompliance with the rental agreement" shall include: One or more substantial violations of the rental agreement, or repeated minor violations of the rental agreement that disrupt the livability of the project, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related project facilities, interfere with the management of the project or have an adverse financial effect on the project. Failure of the tenant to timely supply all required information on income and composition of the tenant household (including required evidence of citizenship or eligible immigation status, in accordance with Part 200, Subpart G) shall constitute a substantial violation of the rental agreement. Nonpayment of rent or any other financial obligation due under the rental agreement (including any portion thereof) beyond any grace period permitted under state law shall constitute a substantial violation of the rental agreement. The payment of rent or any other financial obligation due under the rental agreement after the due date but within the grace period permitted under state law shall constitute a minor violation.

PART 812—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

23. The authority citation for Part 812 would be revised to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 214, Housing and Community Development Act of 1980 (42 U.S.C. 1436a).

24. Section 812.1 would be amended by removing the word "and" following the semicolon in paragraph (a)(1); by changing the period at the end of paragraph (a)(2) to a semicolon and adding the word "and" following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 812.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of

1937 ("Act") available for the benefit of ineligible aliens.

* * * * *

25. Section 812.2 would be amended by inserting definitions in alphabetical order for the terms Citizen, Evidence of citizenship or eligible immigration status ("evidence"), HUD, National, and Responsible entity, to read as follows:

§ 812.2 Definitions.

* * * * *

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status ("evidence"). This term refers to the documents which must be submitted in accordance with § 812.6 for any individual who is or will be occupying an assisted dwelling unit.

(a) For U.S. citizens, the evidence consists of:

(1) A signed declaration of U.S. citizenship (§ 812.6(a)(1)(i));

(2) A signed verification consent form (§ 812.6(a)(2)); and

(3) If the Responsible Entity suspects a fraudulent declaration, documentation of citizenship submitted in accordance with § 812.8(b).

(b) For aliens, the evidence consists of:

(1) A signed declaration of eligible immigration status (§ 812.6(a)(1)(ii));

(2) The INS documents described in § 812.7(a); and

(3) A signed verification consent form (§ 812.6(a)(2)).

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

Responsible entity. The person or entity responsible for administering the restrictions on providing assistance to ineligible aliens:

(a) For the Section 8 Certificate and Housing Voucher programs, it is the PHA.

(b) For the Section 8 Moderate Rehabilitation program (under Part 882), it is the PHA.

(c) For all other Section 8 programs, it is the owner.

* * * * *

26. Sections 812.5 through 812.12 would be added as follows:

§ 812.5 Eligible status.

(a) Financial assistance under the programs covered by this subpart is restricted to individuals who are United States citizens, as defined in § 812.2, or aliens who qualify as one of the following:

(1) An alien lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants);

(2) An alien who entered the United States before January 1, 1972, or such later date as enacted by law, who has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(4) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(5) An alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(6) An alien lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (pre-1982 legalization).

(b) For a family to be eligible for financial assistance, every member of the family residing in the unit must be determined to have eligible status, as described in paragraph (a) of this section.

§ 812.6 Submission of evidence.

(a) *Evidence of citizenship or eligible immigration status.* As a condition to participation in the program, or as a condition to financial assistance being provided, the family must submit the following materials to the responsible entity with respect to each family member, regardless of age, who is or will be an occupant of the assisted dwelling unit:

(1) *Declaration.* A written declaration signed, under penalty of perjury, by the adult for whom the declaration is submitted. In the case of a child, the declaration must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The declaration must certify whether the individual:

(i) Is a citizen;

(ii) Is an alien with eligible immigration status, as described in § 812.5; or

(iii) Was 62 years of age or older and receiving HUD financial assistance on (the effective date of the final rule).

(2) *Consent form.* A verification consent form signed by the adult for whom the form is submitted. In the case of a child, the form must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The consent form shall provide that:

(i) Any evidence submitted by the individual may be released by the responsible entity to HUD.

(ii) Such evidence may be released by the responsible entity to a Federal, State, or local agency for the following purposes: verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, or investigation or prosecution of fraud in connection with any Federal housing assistance program as permitted under applicable State or local laws concerning the protection of personal privacy.

(iii) HUD may release the evidence or other information to any Federal, State, or local government agency (including the Social Security Administration and the Immigration and Naturalization Service) for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, and investigation or prosecution of fraud in connection with any Federal housing assistance program, as permitted by the Privacy Act of 1974, 5 U.S.C. 552a. Information released to the Immigration and Naturalization Service may be used in deportation proceedings. Information may also be released by HUD as permitted by the Freedom of Information Act, 5 U.S.C. 552. HUD is not responsible for the further use or transmission of the information by the entity receiving it.

(3) *Documentation.* The following documentation requirements apply, based on the type of declaration

submitted in accordance with paragraph (a)(1) of this section:

(i) Individuals declaring that they are in an eligible immigration status are required to submit evidence of such status as specified in § 812.7.

(ii) Individuals declaring that they were 62 years of age or older and receiving HUD financial assistance on [the effective date of the final rule] are required to submit proof of age in accordance with HUD requirements.

(iii) Individuals declaring that they are U.S. citizens are *not* required to submit evidence of citizenship, except when the responsible entity has reason to suspect that the individual has submitted a fraudulent declaration of citizenship, and then only in accordance with the requirements of paragraph (a)(4) of this section.

(4) *Procedures when fraud suspected with respect to citizenship.* (i) A responsible entity has reason to suspect that a declaration of citizenship submitted by an applicant or Family member is fraudulent if:

(A) In verifying the applicant's or Family's eligibility for financial assistance, the responsible entity discovers conflicting or inconsistent information regarding the identity or claimed citizenship or eligible immigration status of the applicant or Family member; or

(B) The responsible entity is informed that the individual's claimed citizenship or eligible immigration status is fraudulent. Such information must be corroborated by documentation such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

(ii) When a responsible entity has reason to suspect that an applicant or Family member has submitted a fraudulent declaration of citizenship under § 812.6, the responsible entity shall require the individual to submit documentation of citizenship. If the documentation fails to establish citizenship, as specified under HUD requirements, the responsible entity shall deny or terminate assistance in accordance with § 812.9. Where an individual has received the benefit of a substantial amount of HUD financial assistance to which he or she was not entitled because the individual intentionally misrepresented eligibility on the basis of citizenship and recovery of the funds cannot be achieved by administrative action, the responsible entity may refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow, based on the False Statements Act, 18 U.S.C. 1001 and 1010.

(b) *Notice to applicants and families.*—(1) *Type of notice.* (i) The responsible entity shall notify all applicants of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on [the effective date of the final rule] must also be notified of these requirements. Notification to each Family of the requirement to submit evidence shall coincide with the responsible entity's regular tenant notice concerning verification of income.

(ii) The responsible entity shall notify each applicant and Family that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence referred to in paragraph (a) of this section.

(2) *Form of notice.* A notice under this section of the requirement to submit evidence of citizenship or elibible immigration status shall describe the type of evidence that must be submitted and shall state when the evidence must be submitted. The notice shall be given in accordance with HUD requirements.

(c) *Recipient of evidence.* The required evidence shall be submitted by each applicant and Family to the responsible entity. The responsible entity shall administer the restrictions on providing assistance to ineligible aliens, and shall exercise this responsibility in accordance with HUD requirements.

(d) *Failure to submit evidence.* Failure to submit required evidence of citizenship or eligible immigration status shall result in denial or termination of financial assistance. For the Section 8 Housing Certificate, Voucher and Moderate Rehabilitation programs, denial or termination of assistance shall be in accordance with §§ 812.8 and 812.9 and the informal hearing requirements of § 882.216. For all other Section 8 programs, the procedures of §§ 812.8 and 812.9 shall apply.

(e) *Frequency of Evidence Submission Requirements.* The Family shall submit the necessary evidence at regular and interim reexaminations, in accordance with the requirements of §§ 850.151, 880.603, 881.603, 882.212, 882.515, 883.704, 884.218, 886.124, and 886.324.

(f) *One-time evidence requirement.* Submission of evidence that an occupant of the assisted dwelling unit is a citizen, or that as of [the effective date of the final rule] the occupant was 62 years of age or older and receiving HUD financial assistance, is only required one time during continuously assisted occupancy under any covered program.

§ 812.7 Documents of eligible immigration status.

The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 812.8:

(a) Form I–151 (issued before 1979), I–551, or AR–3a (issued during 1941–1949), Alien Registration Receipt Card (for permanent resident aliens);

(b) Form I–181B or passport, stamped "Processed for I–551, temporary evidence of lawful admission for permanent residence" (for permanent resident aliens);

(c) Form I–94, Arrival-Departure Record, annotated with one of the following:

(1) "Section 207" or "Refugee";

(2) "Section 208" or "Asylum"; or

(3) "Section 243(h)" or "Deportation stayed by Attorney General";

(d) Form I–94, Arrival-Departure Record—Parole Edition, annotated with one of the following:

(1) "Section 212(d)(5)" or "Admitted at Attorney General Discretion";

(2) "Conditional Entry" or "Section 203(a)(7)" (before April 1, 1980);

(e) Form I–688, Temporary Resident Card, or I–688A, Employment Authorization (both of which documents expire), either of which must be annotated "Section 245A";

(f) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(g) Any other document specified by HUD in a notice published in the **Federal Register.**

§ 812.8 Verification of eligible immigration status.

(a) *General procedures.* After notice of the requirement to submit evidence is provided to applicants and the family under § 812.6(c), the responsible entity shall continue to process applicants for purposes of establishing eligibility for financial assistance without regard to immigration status, if the applicant otherwise qualifies for such assistance. In addition, the responsible entity shall verify the immigration status of aliens as follows:

(1) *Primary verification.* (i) Primary verification of the immigration status of applicants and Family members with the Immigration and Naturalization Service (INS) is conducted by means of an automated system that provides access to alien names, file numbers and admission numbers.

(ii) The INS document submitted by the applicant or Family member to establish eligible immigration status must contain a photograph, or the responsibile entity shall request another document bearing a photograph to ensure the identity of the alien.

(iii) The responsible entity shall not deny or terminate financial assistance to an applicant or the Family on the basis of immigration status if the primary verification system indicates that the applicant or Family member has eligible immigration status.

(2) *Secondary verification* (Appeal). (i) Secondary verification provides an appeal of the primary verification determination through a manual search of INS alien files. Secondary verification is instituted by the responsible entity's forwarding of photocopies of the original INS documents listed at § 812.7 (front and back), attached to Document Verification Request Form G–845, to a designated INS field office for review.

(ii) The responsible entity shall promptly institute secondary verification whenever:

(A) Primary verification is either unavailable to, or not feasible for use by, the responsible entity;

(B) Primary verification instructs the responsible entity to institute secondary verification;

(C) Primary verification is unable to verify the immigration status of the applicant or Family member;

(D) Documents are submitted by the applicant or Family member that indicate immigration status, but do not contain an "A-number"; or

(E) An INS receipt is submitted as documentation.

(iii) Pending the outcome of secondary verification under paragraph (a)(2)(ii) of this section, the responsible entity is required to:

(A) Continue to process the applicant for purposes of establishing eligibility for financial assistance or program participation, if the applicant otherwise qualifies for such assistance. Financial assistance may not, however, be provided to any applicant until eligible immigration status is verified through the INS. In cases where eligibility for financial assistance is established prior to the verification of eligible immigration status, the responsible entity shall place the applicant's name on any waiting list and shall allow the applicant to accrue priority on the list pending the verification determination.

(B) Continue to provide financial assistance to, or permit program participation by, a Family without regard to a Family member's immigration status, if the Family otherwise qualifies for such assistance.

(b) *Liability of responsible entity for INS verification.* The responsible entity shall not be liable for any action, delay, or failure of the INS to conduct the automated or manual verification referred to in paragraphs (a) (1) and (2) of this section.

§ 812.9 Denial or termination of assistance.

(a) *Applicability.* The general requirements of this section are applicable to all forms of Section 8 financial assistance, including the Section 8 Housing Certificate and Housing Voucher Programs, and Section 8 Moderate Rehabilitation. The informal hearing requirements under § 882.216 shall govern the denial and termination of assistance under the Section 8 Certificate, Housing Voucher, and Moderate Rehabilitation programs. For all other Section 8 programs, the hearing requirements established under § 812.9(d) shall apply.

(b) *Denial of assistance.* The responsible entity shall not admit an applicant for participation in a Section 8 program or commence any new form of financial assistance for a Family, unless evidence of citizenship or eligible immigration status has been submitted to the responsible entity and verified, as appropriate, in accordance with §§ 812.6 and 812.8.

(c) *Retention of financial assistance.* An owner may not receive or retain financial assistance paid for the benefit of a Family if the owner admits an applicant for participation in a Section 8 program when required evidence of citizenship or eligible immigration status has not been submitted to the owner, and verified through the INS verification system. HUD may take other appropriate remedial action.

(d) *Procedural requirements*—(1) *Denial of assistance*—(i) *Notice.* If the applicant fails to submit the evidence of citizenship or eligible immigration status required under § 812.6, or if the INS verification system under § 812.8 establishes that the applicant does not have eligible immigration status, the owner shall:

(A) Inform the applicant in writing that his or her eligibility for financial assistance is denied, and provide a brief statement of the reasons for the denial of assistance; and

(B) Inform the applicant that he or she has a right to request an informal hearing under paragraph (d)(1)(ii) of this section within 14 days of the date of the notice of ineligibility.

(ii) *Informal hearing.* (A) Upon timely request for an informal hearing, the applicant shall have an opportunity to:

(*1*) Meet with any person(s) designated by the owner, other than a person who made or approved the decision under review or a subordinate of such person (who may be an officer or employee of the owner).

(*2*) Present evidence of citizenship (if required under § 812.8(b)), or of an INS determination of eligible immigration status, as described in § 812.7. Evidence may be considered without regard to admissibility under the rules of evidence applicable to judicial proceedings.

(*3*) Seek representation by an attorney, or other designee, at the applicant's own expense.

(B) The owner shall provide the applicant with a written final decision within five days of the informal hearing, stating the basis for the decision.

(C) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (d)(1)(ii) of this section.

(2) *Termination of Assistance* (including Termination of Tenancy)—(i) *Applicable actions*—(A) *Section 8 Certificate, Housing Voucher, and the Section 8 Moderate Rehabilitation Program.* Upon occurrence of any of the events listed in paragraph (d)(3), the responsible entity shall promptly terminate housing assistance payments for the Family in accordance with the requirements of §§ 882.216, 812.9(d)(5)(ii)(C) and 812.9(d)(7) and other HUD requirements, to the extent that termination is consistent with the provisions of paragraph (d)(4) of this section. (For the Section 8 Housing Voucher Program, see Section (T) of the Notice of Fund Availability published on March 23, 1988 (53 FR 9572, 9585).)

(B) *For all other programs covered under this part.* Upon the occurrence of any of the events listed in paragraph (d)(3) of this section, the owner shall terminate assistance in accordance with the requirements of paragraph (d)(5) to the extent that such action is consistent with the provisions of paragraph (d)(4) of this section. Thereafter, the owner may terminate assisted occupancy in accordance with paragraph (d)(6) of this section, if appropriate.

(ii) [Reserved]

(3) *Termination events.* Financial assistance shall terminate upon the occurrence of any of the following events:

(i) If, after notice under § 812.6 is provided of the duty to submit evidence of citizenship or eligible immigration status, the family fails to submit such evidence for each family member at annual reexamination;

(ii) If the Family fails to obtain the responsible entity's approval for occupancy of the assisted dwelling unit by any additional person;

(iii) If the INS verification system described in § 812.8 establishes that a Family member does not have eligible immigration status; or

(iv) If the responsible entity has admitted a Family with financial assistance, but the responsible entity is subsequently informed by HUD or otherwise determines, in accordance with § 812.8(b) that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(4) *When termination is not required.* (i) The responsible entity may not terminate financial assistance if any person for whom required evidence has not been submitted by the responsible entity has moved from the assisted dwelling unit;

(ii) The responsible entity may not terminate financial assistance if any Family member determined not to be in an eligible immigration status following verification under § 812.8 has moved from the assisted dwelling unit;

(iii) The responsible entity may not terminate financial assistance if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the assisted dwelling unit;

(iv) Instead of terminating assistance when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination (i.e., for a new occupant), the responsible entity may grant an extension of time for submission of the required evidence.

(A) The responsible entity may, in its own discretion, grant an extension if:

(*1*) The Family submits the declaration required under § 812.6(a) certifying that any Family member for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(*2*) The Family promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under this paragraph (d)(4)(iv) shall be for a specific period needed to obtain the evidence. Where the Family is required to submit the evidence at an annual reexamination, any extension(s) granted by the responsible entity shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the Family is required to request the responsible entity's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the responsible entity shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The responsible entity's decision to grant an extension of time for the Family to submit the evidence, and the responsible entity's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The Family shall not have any right to an extension, and the responsible entity may revoke an extension if the Family is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the Family will be able to submit the evidence during the extension.

(D) If the Family has not submitted the evidence by the end of the ninety-day extension, the responsible entity shall promptly terminate financial assistance for the Family by terminating the assisted tenancy in accordance with the applicable requirements of paragraphs (d)(5), (d)(6) and (d)(7) of this section. The responsible entity's decision to grant an extension shall be in writing, and shall state the reasons for the responsible entity's determination.

(v) The responsible entity must consider permitting continued assistance or deferral of termination on behalf of an individual in occupancy on [the effective date of the final rule] under § 812.10.

(5) *Procedural requirements—termination of assistance.*—(i) *Termination notice.* Upon occurrence of any of the events described in paragraph (d)(3) of this section, the owner shall:

(A) Inform the Family in writing that the Family's eligibility for financial assistance is terminated, and provide a brief statement of the reasons for the termination of assistance.

(B) Inform the Family in writing of the right to request an informal hearing within 14 days of the date of the owner's notice. Financial assistance to a Family may not be terminated until the conclusion of the informal hearing under paragraph (d)(5)(ii) of this section, and then only upon a determination that the Family is not in an eligible immigration status.

(ii) *Informal hearing.* (A) Upon timely request for an informal hearing, the Family shall have an opportunity to:

(*1*) Meet with any person(s) designated by the owner (including an officer or employee of the owner) other than a person who made or approved the decision under review or a subordinate of such person.

(*2*) Submit evidence of citizenship (if required under § 812.8(b)), or of an INS determination of eligible immigration status, as described in § 812.7. Evidence may be considered without regard to its admissibility under the rules of evidence applicable to judicial proceedings.

(*3*) Seek representation by an attorney, or other designee, at the Family's own expense.

(B) The owner shall provide the Family with a written determination within five days of the informal hearing, stating the basis for the decision.

(C) The owner must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the family's request for an informal hearing on the initial determination of ineligibility; and the owner's written determination following the informal hearing under paragraph (d)(5)(ii) of this section.

(6) *Termination of assisted occupancy.* Upon occurrence of any of the events described in paragraph (d)(3) of this section, assisted occupany is terminated by doing any of the following:

(i) If permitted under the lease, the owner may notify the Family that because of such occurrence the Family is required to pay the HUD-approved market rent for the dwelling unit. The notice shall be given in accordance with HUD requirements.

(ii) The owner may enter into a new lease without Section 8 assistance.

(iii) The owner may evict the family. An owner may continue to receive assistance payments in accordance with the Housing Assistance Payments contract if action to terminate the tenancy under an assisted lease is promptly initiated and diligently pursued in accordance with the terms of the lease, and if eviction of the Family is undertaken by judicial action pursuant to State and local law. Action by the owner to terminate the tenancy and to evict the Family must be in accordance with HUD regulations and other HUD requirements. For any jurisdiction, HUD may prescribe a maximum period during which assistance payments may be continued during eviction proceedings

and may prescribe other standards of reasonable diligence for the prosecution of eviction proceedings, the owner should evict the Family.

(7) *Resumption of assistance.* When financial assistance for the Family has been terminated in accordance with § 812.9 (d)(5) and (d)(6), financial assistance for the Family shall not resume unless:

(i) All required evidence has been submitted by the Family and verified by the owner; and

(ii) Resumption of assistance is authorized in accordance with HUD requirements.

§ 812.10 Special provisions for preservation of mixed families and other families in occupancy on [the effective date of the final rule].

(a)(1) When the responsible entity would otherwise be required to terminate assistance because of the status of an individual who was receiving financial assistance on [*the effective date of the final rule*] (following the provision of a hearing in accordance with § 812.9 or § 862.216, if requested), the responsible entity must consider (or may consider, in the case of a PHA) whether the Family qualifies for relief under this section.

(2) Since a PHA has greater discretion than a project owner, in accordance with statutory provisions, to determine in what cases to continue assistance indefinitely and what situations to defer termination of assistance, it must establish a policy and criteria to follow in making its decisions.

(b) If the individual lacking eligible status, as described in § 812.5, is a member of a family in which the head of household or spouse has eligible status, the responsible entity must consider (may consider, in the case of a PHA) whether continued assistance is necessary to avoid the division of the family. In making this determination, the responsible entity must consider only what is necessary to avoid division of the "family" consisting of the head of household, any spouse, and any parents or children of the head of household or spouse. The decision to continue assistance on behalf of such an individual will be made once, and need not be reconsidered thereafter.

(1) If the Family is receiving only minimal financial assistance and the responsible entity determines that the Family could afford to continue occupancy in the dwelling unit without assistance, the responsible entity may determine that continued provision of financial assistance is not necessary to avoid the division of the Family and may terminate assistance rather than to continue it under this section.

(2) If the Family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful, this evidence will be sufficient for the responsible entity to determine that continued financial assistance is necessary to avoid division of the Family. In such a case, the responsible entity must continue (should continue, in the case of a PHA) to provide financial assistance under this section so long as the Family satisfies other requirements of continued participation.

(3) If some members of the family do not qualify as members of the "family" that is not to be divided, as described above, financial assistance may be continued to the Family under this section only if the persons not qualifying as "family" members move out of the unit within the period stated in the final determination of ineligible status.

(c) If financial assistance is not to be continued under paragraph (b) of this section, then the responsible entity must determine (may determine, in the case of a PHA) whether temporary deferral of the termination of financial assistance is necessary to permit the orderly transition of the ineligible individual and family members involved to other affordable housing. If such a deferral is warranted, it shall be for a six-month period. A deferral period may be renewed for an additional period of six months if warranted, but the aggregate deferral period may not exceed three years.

(1) The responsible entity will determine whether other affordable housing of appropriate size is available based on its own knowledge and on evidence of the Family's efforts to locate such housing. If the determination is that additional time is needed for the Family to make the transition to other affordable housing, the responsible entity will grant a deferral under this paragraph (c).

(2) At the beginning of each deferral period, the responsible entity must inform the Family of its ineligibility for financial assistance and offer the Family information and referrals to assist in finding other affordable housing.

(3) Before the end of each deferral period, the responsible entity must make a determination of the availability of affordable housing (based on its own knowledge and on evidence of the Family's efforts to locate such housing) in sufficient time so that the Family can be advised, at least 60 days (or some other reasonable time, in the case of a PHA) in advance of the expiration of the deferral period, whether termination will be deferred again.

(4) If, during a deferral period, the status of the head of household or spouse changes and he or she is able to establish eligible status, the Family either will be determined fully eligible (if all family members are also eligible) or will be considered (may be considered, in the case of a PHA) for eligibility for indefinite continuation of financial assistance under paragraph (b) of this section.

(d) An owner's determination of whether the family qualifies for relief under this section must be conveyed to the family in writing, stating the reasons for the decision if it is adverse to the family. If a project owner decides neither to continue assistance under paragraph (b) of this section nor to defer termination of financial assistance temporarily under paragraph (c) of this section on behalf of an individual who has been determined to lack eligible status, the project owner shall offer the family an opportunity to meet with a representative of the owner to discuss the decision, in accordance with HUD procedures.

§ 812.11 Specific prohibition of assistance to nonimmigrant student aliens.

The provisions of § 812.10, permitting continuation of assistance or deferral of termination of financial assistance for certain families, do not authorize relief with respect to any individual who is determined to be a nonimmigrant student alien. For this purpose, a nonimmigrant student alien is defined as any alien who has a residence in a foreign country that such alien has no intention of abandoning; who is a bona fide student qualified to pursue a full course of study; and who is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and the alien spouse and minor children of any alien described above, if the spouse or children are accompanying such alien or following to join such alien.

§ 812.12 Protection from liability for Responsible Entities, State and local government agencies and officials.

(a) *Protection from liability for Responsible Entities.* HUD shall not take any compliance, disallowance, penalty, or other regulatory action against a responsible entity with respect to any error in its determination to make an individual eligible for financial assistance based on citizenship or immigration status:

(1) If the responsible entity established eligibility based upon a verification of eligible immigration status through the INS' primary or secondary verification system, as described in § 812.8;

(2) If the responsible entity was required to provide an opportunity for the applicant or Family to submit evidence in accordance with § 812.6;

(3) If the responsible entity was required to wait for a response from the INS to the request for verification of eligible immigration status in accordance with § 812.8; or

(4) If the responsible entity was required to provide the informal hearing requirements under § 812.9(d)(5)(ii).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system described in §§ 812.8 and 812.9, so long as the implementation by the State or local government agency or official is in accordance with prescribed HUD rules and requirements.

PART 850—HOUSING DEVELOPMENT GRANTS

26. The authority citation for Part 850 would continue to read as follows:

Authority: Sec. 17, U.S. Housing Act of 1937 (42 U.S.C. 1437o); sec. 7(d) of the Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

27. Section 850.151 would be amended by adding two sentences at the beginning of paragraph (c), by adding two sentences at the end of paragraph (f)(1), and by adding a new paragraph (f)(3), to read as follows:

§ 850.151 Project restrictions.

* * * * *

(c) *Tenant selection.* The owner shall determine the eligibility of applicants for lower income units in accordance with the requirements of Parts 812 and 813, including the provisions concerning citizenship or eligible immigration status and concerning income limits. (For procedures related to denial of assistance for failure to establish citizenship or eligible immigration status, see Part 812). * * *

* * * * *

(f) *Reexamination of tenant income and composition.*

(1) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

* * * * *

(3) For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

PART 880—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR NEW CONSTRUCTION

28. The authority citation for Part 880 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

29. In § 880.504, a new paragraph (e) would be added, to read as follows:

§ 880.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

30. In § 880.601, paragraph (b) would be revised to read as follows:

§ 880.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determining eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 880.613, selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

31. Section 880.603 would be revised by adding two sentences at the end of paragraph (c)(1), by adding one sentence at the end of paragraph (c)(2), by revising the introductory language in paragraph (b), and by adding a sentence at the end of paragraphs (b)(3) and (c)(3), to read as follows:

§ 880.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with Part 813 and information related to citizenship and eligible immigration status in accordance with Part 812 of this chapter); for determining whether the applicant is eligible in accordance with Parts 812 and 813; and for selecting families (including giving a Federal selection preference in accordance with § 880.613).

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, a defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(2) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the

addition of a new family member (except for the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family members.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

* * * * *

32. In § 880.607, paragraph (b)(3) would be revised and a new paragraph (c)(4) would be added, to read as follows:

§ 880.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: One or more substantial violations of the lease, or repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Failure of the family to timely submit all required information on family income and composition (including required evidence of citizenship or eligible immigration status) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

(c) *Termination of tenancy.* * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see Part 812.

PART 881—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM FOR SUBSTANTIAL REHABILITATION

33. The authority citation for Part 881 would continue to read as follows:

Authority: Secs. 3, 5, and 8, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437c, 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

34. In § 881.504, a new paragraph (e) would be added, to read as follows:

§ 881.504 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the Family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

35. In § 881.601, paragraph (b) would be revised to read as follows:

§ 881.601 Responsibilities of owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determining eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 881.613, selection of tenants, reexamination of family income, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

36. Section 881.603 would be amended by revising the introductory language of paragraph (b), by adding a sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 881.603 Selection and admission of assisted tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with Part 813 and information related to citizenship and eligible immigration status in accordance with Part 812 of this chapter; for determining whether the applicant is eligible in accordance with Parts 812 and 813; and for selecting families (including giving a Federal selection preference in accordance with § 881.613).

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

* * * * *

(c) * * *

(1) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(2) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

36. In § 881.607, paragraph (b)(3) would be revised and a new paragraph (c)(4) would be added, to read as follows:

§ 881.607 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: one or more substantial violations of the lease, or repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building. Failure of the family to timely submit all required information on family income and composition (including required evidence of citizenship or eligible immigration status) will constitute a substantial violation of the lease. Nonpayment of rent or any other

financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

(c) *Termination of tenancy.* * * *

(4) For provisions related to termination of assistance because of failure to establish citizenship or eligible immigration status, including the informal hearing procedures, see Part 812.

* * * * *

PART 882—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—EXISTING HOUSING

37. The authority citation for Part 882 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

38. In § 882.116, paragraph (c) would be revised to read as follows:

§ 882.116 Responsibilities of the PHA.

* * * * *

(c) Receipt and review of applications for Certificates of Family Participation and provision of a Federal preference in selecting applicants for participation in accordance with § 882.219. The PHA is also responsible for verifying the sources and amount of the Family's income and other information necessary for determining eligibility and the amount of the assistance payments (including citizenship or eligible immigration status) in accordance with Parts 812 and 813, and maintenance of a waiting list in accordance with this part.

* * * * *

39. In § 882.18, paragraph (a)(1) would be revised to read as follows:

§ 882.118 Obligations of the family.

(a) * * *

(1) Supply such certification, release, information or documentation as the PHA or HUD determine to be necessary, including submission of required evidence of citizenship or eligible immigration status in accordance with Part 812, and submissions required for an annual or interim reexamination of Family income and composition.

* * * * *

40. In § 882.209, paragraph (a)(2) would be amended by revising the first sentence to read as follows:

§ 882.209 Selection and participation.

(a) * * *

(2) The PHA shall determine whether an applicant for participation qualifies as a Family, is income eligible and is a citizen or is in eligible immigration status as determined in accordance with Part 812. * * *

* * * * *

41. In § 882.210, a new paragraph (3) would be added, to read as follows:

§ 882.210 Grounds for denial or termination of assistance.

* * * * *

(e) The Family's obligations as stated in § 882.118 include submission of required evidence of citizenship or eligible immigration status. For a statement of circumstances in which the PHA is required to deny or terminate housing assistance payments because of a Family's inability to establish citizenship or eligible immigration status, and the applicable informal hearing procedures, see Part 812 and § 882.216(b)(6)(iv).

42. Section 882.212 would be amended by adding two sentences at the end of paragraph (a), and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.212 Reexamination of family income and composition

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financing assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the PHA must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of housing assistance payments when the PHA determines that the Family lacks citizenship or eligible immigration status, see Part 812 and § 882.216(b)(6)(iv).

43. In § 882.216, paragraphs (a)(2) would be amended by adding one sentence at the end, and (b)(6)(iv) would be revised to read as follows:

§ 882.216 Informal review or hearing.

(a) * * *

(2) * * * Where the denial of assistance is based upon a failure to establish citizenship or eligible immigration status, the applicant may present evidence of citizenship (if required under § 812.8(b)), or of an INS determination of eligible immigration status, in accordance with § 812.7.

(b) * * *

(6) * * *

(iv) The PHA and the participant shall be given the opportunity to present evidence and may question any witnesses. Where the decision to terminate assistance is based upon a failure to establish citizenship or eligible immigration status, the participant may present evidence of citizenship (if required under § 812.8(b)), or of an INS determination of eligible immigration status, in accordance with § 812.7. Evidence may be considered without regard to admissability under the rules of evidence applicable to judicial proceedings.

* * * * *

44. Section § 882.515 is amended by adding two sentences at the end of paragraph (a) and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 882.515 Reexamination and family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the PHA must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance when the PHA determines that the Family lacks

citizenship or eligible immigration status, see Part 812 and § 882.216(b)(6).

* * * * *

PART 883—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—STATE HOUSING AGENCIES

45. The authority citation for Part 883 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

46. In § 883.101, the last sentence of paragraph (c) would be revised to read as follows:

§ 883.101 General.

* * * * *

(c) *Tenant rents and Eligible Families.* * * * Eligible families are Families, as defined in part 812, whose incomes qualify them for assistance in accordance with Part 813, and who are otherwise eligible under Parts 812 and 813.

47. In § 883.605, a new paragraph (e) would be added, to read as follows:

§ 883.605 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to submit evidence of citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate financial assistance in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

48. In § 883.702, paragraph (b) would be revised to read as follows:

§ 883.702 Responsibilities of the owner.

* * * * *

(b) *Management and maintenance.* The owner is responsible for all management functions (including determination of the eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 883.714, selection of tenants, reexamination of family incomes, evictions and other terminations of tenancy, and collection of rents) and all repair and maintenance functions (including ordinary and extraordinary maintenance and replacement of capital items). All these functions must be performed in compliance with applicable Equal Opportunity requirements.

* * * * *

49. Section 883.704 would be amended by revising the introductory language of paragraph (b), by adding a sentence at the end of paragraph (b)(3), by adding two sentences at the end of paragraph (c)(1), and by adding one sentence at the end of paragraphs (c)(2) and (c)(3), to read as follows:

§ 883.704 Selection and admission of tenants.

* * * * *

(b) *Determination of eligibility and selection of tenants.* The owner is responsible for obtaining and verifying information related to income in accordance with Part 813 and information related to citizenship and eligible immigration status in accordance with Part 812 of this chapter; for determining whether the applicant is eligible in accordance with Parts 812 and 813; and for selecting families (including giving a Federal preference in accordance with § 883.714).

* * * * *

(3) * * * For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

* * * * *

(c) *Reexamination of Family income and composition*—(1) *Regular reexaminations.* * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(2) *Interim reexaminations.* * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(3) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see Part 812.

50. In § 883.708, paragraph (b)(3) would be revised and a new paragraph (c)(4) would be added to read as follows:

§ 883.708 Termination of tenancy and modification of lease.

* * * * *

(b) * * *

(3) *Material noncompliance.* Material noncompliance with the lease includes: (i) One or more substantial violations of the lease, or (ii) repeated minor violations of the lease that disrupt the livability of the building, adversely affect the health or safety of any person or the right of any tenant to the quiet enjoyment of the leased premises and related facilities, interfere with the management of the building or have an adverse financial effect on the building or project. Failure of the family to timely submit all required information on family income and composition (including required evidence of citizenship and eligible immigration status) will constitute a substantial violation of the lease. Nonpayment of rent or any other financial obligation due under the lease (including any portion thereof) beyond any grace period permitted under State law will constitute a substantial violation of the lease. The payment of rent or any other financial obligation due under the lease after the due date but within the grace period permitted under State law will constitute a minor violation.

* * * * *

(c) *Termination of tenancy.* * * *

(4) For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see Part 812.

PART 884—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM, NEW CONSTRUCTION SET-ASIDE FOR SECTION 515 RURAL RENTAL HOUSING PROJECTS

51. The authority citation for Part 884 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

52. In § 884.118, paragraph (a)(3) would be revised to read as follows:

§ 884.118 Responsibilities of the owner.

(a) * * *

(3) Performance of all management fuctions, including the taking of applications; determining the eligibility of applicants in accordance with Parts

812 and 813; provision of Federal selection preferences in accordance with § 884.226; selection of families in accordance with any other pertinent requirements; and determination of the amount of tenant rent in accordance with HUD established schedules and criteria.

* * * * *

53. In § 884.214, paragraph (b)(1) would be revised and a new paragraph (b)(8) would be added, to read as follows:

§ 884.214 Marketing.

* * * * *

(b) *Eligibility, selection and admission of families.* (1) The owner is responsible for determination of eligibility of applicants in accordance with the procedures of Part 812, selection of families from among those determined to be eligible (including provision of Federal selection preferences in accordance with § 884.226), and computation of the amount of housing assistance payments on behalf of each selected Family, in accordance with schedules and criteria established by HUD: *Provided,* that in establishing criteria for the selection of applicants, no local residency requirements or priority systems relating to place of residence may be applied to applicants who are working in the community.

* * * * *

(8) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

54. In § 884.216, a new sentence would be added at the end of the paragraph to read as follows:

* * * * *

§ 884.216 Termination of tenancy.

* * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, including the applicable informal hearing requirements, see Part 812.

55. Section 884.218 would be amended by adding two sentences at the end of paragraph (a) any be adding one sentence at the end of paragraph (b) and (c), to read as follows:

§ 884.218 Reexamination of Family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

* * * * *

56. In § 884.223, a new paragraph (e) would be added to read as follows:

§ 884.223 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to pargraph (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

PART 886—SECTION 8 HOUSING ASSISTANCE PAYMENTS PROGRAM—SPECIAL ALLOCATIONS

Subpart A—Additional Assistance Program For Projects With HUD-Insured and HUD Held Mortgages

57. The authority citation for Part 886 would continue to read as follows:

Authority: Secs. 3, 5, and 8, U.S. Housing Act of 1937 (42 U.S.C. 1437a, 1437c, and 1437f); sec. 7(d), Department of HUD Act (42 U.S.C. 3535(d)).

58. In § 886.119, paragraph (a)(3) would be revised to read as follows:

§ 886.119 Responsibilities of the owner.

(a) * * *

(3) Performance of all management functions, including the taking of applications, determining eligibility of applicants in accordance with Parts 812 and 813, provision of Federal selection preferences in accordance with § 886.132; selection of tenants in accordance with any other pertinent requirements; and determination of the amount of Tenant Rent in accordance with Part 813 of this chapter.

* * * * *

59. In § 886.121, paragraph (b) would be revised and a new paragraph (c) would be added, to read as follows:

§ 886.121 Marketing.

* * * * *

(b) In taking applications, selecting families, and all related determinations, the Owner must comply with the applicable provisions of the Contract, this subpart, and the procedures of Part 812.

(c) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

60. Section 886.124 would be amended by adding two sentences at the end of paragraph (a) and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.124 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [*the effective date of the final rule*].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

61. Section 886.128 would be revised to read as follows:

§ 886.128 Evictions.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For

cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of Parts 247 and 812 shall apply.

62. In § 886.129, a new paragraph (e) would be added, to read as follows:

§ 886.129 Leasing to eligible families.

* * * * *

(e) *Termination of assistance for failure to establish citizenship or eligible immigration status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.7 because the owner determines that the Family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

63. In § 886.318, paragraph (a)(3) would be revised to read as follows:

§ 886.318 Responsibilities of the owner.

(a) *Management and maintenance.*

* * *

(3) Performance of all management functions, including the taking of applications, determination of eligibility in accordance with Parts 812 and 813, selection of families in accordance with the Federal preferences in accordance with § 886.337 and the owner's tenant selection factors approved by HUD, and determination of the amount of tenant rent in accordance with Part 813 of this chapter.

* * * * *

64. In § 886.321, paragraph (b)(1) would be revised and a new paragraph (b)(7) would be added, to read as follows:

§ 886.321 Marketing.

* * * * *

(b)(1) HUD will determine the eligibility for assistance of families in occupancy before sales closing. After the sale, the owner shall be responsible for determining the eligibility of applicants for tenancy (including compliance with the procedures of Part 812 on evidence of citizenship or eligible immigration status), selection of families from among those determined to be eligible (including provision of Federal preferences in accordance with § 886.337), and computation of the amount of housing assistance payments on behalf of each selected family, in accordance with the Gross Rent and the Total Tenant Payment computed in accordance with 24 CFR Part 813. * * *

* * * * *

(7) For the informal hearing provisions related to denial of assistance based upon failure to establish citizenship or eligible immigration status, see Part 812.

65. Section 886.324 would be amended by adding two sentences at the end of paragraph (a) and by adding one sentence at the end of paragraphs (b) and (c), to read as follows:

§ 886.324 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the owner must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 812.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the owner must follow the requirements of Part 812 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Continuation of housing assistance payments.* * * * For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see § 812.9.

66. Section 886.328 would be revised to read as follows:

§ 886.328 Termination of tenancy.

Part 247 of this title applies to the termination of tenancy and eviction of a family assisted under this subpart. For cases involving termination of tenancy because of a failure to establish citizenship or eligible immigration status, the procedures of Parts 247 and 812 shall apply.

67. In § 886.329, a new paragraph (e) would be added, to read as follows:

§ 886.329 Leasing to eligible families.

* * * * *

(e) *Termination of Assistance for Failure to Establish Citizenship or Eligible Immigration Status.* If an owner subject to paragraphs (a) and (b) of this section is required to terminate housing assistance payments for the family in accordance with § 812.9 because the owner determines that the family lacks citizenship or eligible immigration status, the owner may allow continued occupancy of the unit by the family without Section 8 assistance following the termination of assistance. The owner must make the unit available for occupancy by an eligible family when the original family vacates the unit.

PART 900—SECTION 23 HOUSING ASSISTANCE PAYMENTS PROGRAM—NEW CONSTRUCTION AND SUBSTANTIAL REHABILITATION

68. The authority citation for Part 900 would continue to read as follows:

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 10(b) of the U.S. Housing Act of 1937 (42 U.S.C. 1410(b)).

69. In § 900.102, paragraph (g) would be revised to read as follows:

§ 900.102 Definitions.

* * * * *

(g) *Eligible families.* Those families determined by the LHA to meet the requirements for admission into housing assisted hereunder in accordance with Parts 912 and 913 of this chapter and other pertinent requirements. * * *

* * * * *

70. Section 900.202 would be amended by adding a new sentence to the end of the introductory language of paragraph (d)(3), and by redesignating existing paragraphs (g) and (h) as paragraphs (h) and (i) respectively, and by adding a new paragraph (g), to read as follows:

§ 900.202 Project operation.

* * * * *

(d) * * *

(3) * * * For provisions related to denial of assistance because of a failure to establish citizenship or eligible immigration status, the requirements of § 960.207 and Part 912 shall apply.

* * * * *

(g) *Termination of assistance.* For provisions related to termination of assistance for failure to establish citizenship or eligible immigration status, the requirements of Parts 912 and 966 shall apply.

* * * * *

PART 904—LOW RENT HOUSING HOMEOWNERSHIP OPPORTUNITIES

71. The authority citation for Part 904 would continue to read as follows:

Authority: U.S. Housing Act of 1937 (42 U.S.C. 1437–1437q); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

72. In § 904.104, the first sentence of paragraph (b)(1) and paragraph (g)(2) in its entirety would be revised, to read as follows:

§ 904.104 Eligibility and selection of homebuyers.

* * * * *

(b) *Eligibility and standards for admission.* (1) Homebuyers shall be lower income families that are determined to be eligible for admission in accordance with the provisions of Parts 912 and 913, which prescribe income definitions, income limits, and restrictions concerning citizenship or eligible immigration status. * * *

* * * * *

(g) *Notification to applicants.* * * *

(2) Applicants who are not selected for a specific Turnkey III development shall be so notified in accordance with HUD-approved procedure. The notice shall state the reason for the applicant's rejection (including nonrecommendation by the recommending committee unless the applicant has previously been so notified by the committee) and the notice shall state that the applicant will be given an informal hearing on such determination, regardless of the reason for the rejection, if he makes a request for such a hearing within a reasonable time (to be specified in the notice) from the date of the notice. For provisions related to denial of assistance for failure to establish citizenship or eligible immigration status, the requirements of § 960.207 and Part 912 shall apply.

73. In § 904.107, paragraphs (j)(2) and (m)(1) would be revised, to read as follows:

§ 904.107 Responsibilities of homebuyer; administrative grievance hearing.

* * * * *

(j) *Homebuyer's required monthly payment.* * * *

(2) For purposes of determining eligibility of an applicant (see Parts 912 and 913, as well as this part) and the amount of Homebuyer payments under paragraph (j)(1) of this section, the LHA shall examine the Family's income and composition and follow the procedures required by Part 912 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 904.104(h)(1), the LHA shall reexamine the Homebuyer's income and composition regularly, at least once every 12 months, following the requirements of Part 912 concerning verification of the immigration status of any family member who is not a citizen, as defined in § 912.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule]. The Homebuyer shall comply with the LHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the LHA, upon consultation with the family and verification of the information (in accordance with Parts 912 and 913 of this chapter) must promptly make any adjustments determined to be appropriate in the Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen or alien with eligible immigration status.

* * * * *

(m) *Termination by LHA.* (1) In the event the homebuyer should breach the Homebuyers Ownership Opportunity Agreement by failure to make the required monthly payment within ten days after its due date, by misrepresenting or withholding of information in applying for admission or in connection with any subsequent reexamination of income and family composition (including submission and verification of evidence of citizenship or eligible immigration status), or by failure to comply with any of the other homebuyer obligations under the Agreement, the LHA may terminate the Agreement 30 days after giving the homebuyer notice of its intention to do so in accordance with paragraph (m)(3) of this section. For termination of assistance for failure to establish citizenship or eligible immigration status under Part 912, the requirements of Part 912 and 966 shall apply.

* * * * *

PART 905—INDIAN HOUSING

74. The authority citation for Part 905 would continue to read as follows:

Authority: Secs. 3, 4, 5, 6, 9, 11, 12, and 16, United States Housing Act of 1937 (42 U.S.C. 1437a, 1437b, 1437c, 1437d, 1437g, 1437i, 1437j, and 1437n); sec. 7(b), Indian Self-Determination and Education Assistance Act (25 U.S.C. 450e(b)); sec. 7(d), Department of Housing and Urban Development Act (42 US.C. 3535(d)).

75. In § 905.302, paragraph (a)(1) would be revised and a new paragraph (c) would be added to read as follows:

§ 905.302 Admission policies.

(a) *Eligibility.* (1) IHAs shall determine the eligibility of applicants in accordance with Parts 912 and 913, including the requirements concerning citizenship or eligible immigration status and on income limits.

* * * * *

(c) *Denial of assistance.* For procedures related to denial of assistance for failure to establish citizenship or eligible immigration status under Part 912, see § 960.207.

76. In § 905.303, the first sentence would be revised to read as follows:

§ 905.303 Grievance procedures.

The requirements set forth in HUD regulations relating to procedures for the resolution of tenant or Homebuyer grievances against Public Housing agencies (24 CFR Part 966) are not applicable to Projects under this part, *except* where the termination of assistance is based upon a failure to establish citizenship or eligible immigration status in accordance with the requirements of Part 912. * * *

77. In § 905.304, paragraph (c) would be revised, to read as follows:

§ 905.304 Determination of rents and homebuyer payments.

* * * * *

(c) *Initial determination and reexamination of family income.* For purposes of determining eligibility of an applicant (see Parts 912 and 913, as well as this part) and the amount of rent and Homebuyer payments under paragraphs (a) and (b) of this section, the IHA shall examine the Family's income and composition and follow the procedures required by Part 912 for determining citizenship or eligible immigration status before initial occupancy. Thereafter, for the purposes stated above and to determine whether a Homebuyer is required to purchase the home under § 905.422(e), the IHA shall reexamine the family's income and composition regularly, at least once every 12 months, following the requirements of Part 912 concerning verification of the immigration status of any family member who is not a citizen, as defined in § 912.2, except for family members who were at least 62 years of age and receiving HUD financial assistance on [the effective date of the final rule]. The family shall comply with the IHA's policy regarding required interim reporting of changes in the family's income and composition. If the IHA receives information from the family or other source concerning a change in the family income or other circumstances between regularly scheduled reexaminations, the IHA, upon consultation with the family and verification of the information (in accordance with Parts 912 and 913 of

this chapter) must promptly make any adjustments determined to be appropriate in the rent or Homebuyer payment amount or take appropriate action concerning the addition of a family member who is not a citizen or alien with eligible immigration status. For provisions requiring termination of assistance for failure to establish citizenship or eligible immigration status, see Part 912.

PART 912—DEFINITION OF FAMILY AND OTHER RELATED TERMS; OCCUPANCY BY SINGLE PERSONS

78. The authority citation for Part 912 would be revised to read as follows:

Authority: Sec. 3, United States Housing Act of 1937 (42 U.S.C. 1437a); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)); sec. 214, Housing and Community Development Act of 1980 (42 US.C. 1436a).

79. Section 912.1 would be amended by changing the period at the end of the paragraph (a)(2) to a semicolon and adding the word "and" following the semicolon; and by adding a new paragraph (a)(3), to read as follows:

§ 912.1 Purpose and applicability.

(a) * * *

(3) Implements the statutory prohibition against making assistance under the United States Housing Act of 1937 ("Act") available for the benefit of ineligible aliens.

79. Section 912.2 would be amended by inserting definitions in alphabetical order for the terms Citizen, Evidence of citizenship or eligible immigration status ("evidence"), HUD, and National, to read as follows:

§ 912.2 Definitions.

* * * * *

Citizen. A citizen or national of the United States.

* * * * *

Evidence of citizenship or eligible immigration status ("evidence"). This term refers to the documents which must be submitted in accordance with § 912.7 for any individual who is or will be occupying an assisted dwelling unit.

(a) For U.S. citizens, the evidence consists of:

(1) A signed declaration of U.S. citizenship (§ 912.6(a)(1)(i));

(2) A signed verification consent form (§ 912.6(a)(2)); and

(3) If the PHA suspects a fraudulent declaration, documentation of citizenship submitted in accordance with the requirements of § 912.8(b).

(b) For aliens, the evidence consists of:

(1) A signed declaration of eligible immigration status (§ 912.6(a)(1)(ii));

(2) The INS documents described in § 912.7(a); and

(3) A signed verification consent form (§ 912.6(a)(2)).

HUD. The U.S. Department of Housing and Urban Development.

* * * * *

National. A person who owes permanent allegiance to the United States, for example, as a result of birth in a United States territory or possession.

* * * * *

81. Sections 912.5 through 912.12 would be added as follows:

§ 912.5 Eligible status.

(a) Participation in the programs covered by this part is restricted to individuals who are United States citizens, as defined in § 912.2, or aliens who qualify as one of the following:

(1) An alien lawfully admitted for permanent residence, as defined by section 101(a)(20) of the Immigration and Nationality Act (INA), as an immigrant, as defined by section 101(a)(15) of the INA (8 U.S.C. 1101(a)(20) and 1101(a)(15), respectively) (immigrants);

(2) An alien who entered the United States before January 1, 1972, or such later date as enacted by law, who has continuously maintained residence in the United States since then, and who is not ineligible for citizenship, but who is deemed to be lawfully admitted for permanent residence as a result of an exercise of discretion by the Attorney General under section 249 of the INA (8 U.S.C. 1259);

(3) An alien who is lawfully present in the United States pursuant to an admission under section 207 of the INA (8 U.S.C. 1157) (refugee status); pursuant to the granting of asylum (which has not been terminated) under section 208 of the INA (8 U.S.C. 1158) (asylum status); or as a result of being granted conditional entry under section 203(a)(7) of the INA (8 U.S.C. 1153(a)(7)) before April 1, 1980, because of persecution or fear of persecution on account of race, religion, or political opinion or because of being uprooted by catastrophic national calamity;

(4) An alien who is lawfully present in the United States as a result of an exercise of discretion by the Attorney General for emergent reasons or reasons deemed strictly in the public interest under section 212(d)(5) of the INA (8 U.S.C. 1182(d)(5)) (parole status);

(5) An alien who is lawfully present in the United States as a result of the Attorney General's withholding deportation under section 243(h) of the INA (8 U.S.C. 1253(h)) (threat to life or freedom); or

(6) An alien lawfully admitted for temporary or permanent residence under section 245A of the INA (8 U.S.C. 1255a) (pre-1982 legalization).

(b) (1) For a family to be eligible for participation, every member of the family residing in the unit must be determined to have eligible status, as described in paragraph (a) of this section.

(2) A homebuyer who executed a Homeownership Opportunity Agreement under the Turnkey III program or who executed a Mutual Help and Occupancy Agreement under the Mutal Help Homeownership program before [the effective date of the final rule] is *not* subject to this citizenship or eligible immigration status requirement for continued participation.

§ 912.6 Submission of evidence.

(a) *Evidence of citizenship or eligible immigration status.* As a condition to participation in the program, the Family must submit the following materials to the PHA on behalf of each Family member, regardless of age, who is or will be an occupant of the assisted dwelling unit.

(1) *Declaration.* A written declaration signed, under penalty of perjury, by the adult for whom the declaration is submitted. In the case of a child, the declaration must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The declaration must certify whether the individual:

(i) Is a citizen;

(ii) Is an alien with eligible immigration status, as described in § 912.5; or

(iii) Was 62 years of age or older and receiving HUD financial assistance on the effective date of the final rule.

(2) *Consent form.* A verification consent form signed by the adult for whom the form is submitted. In the case of a child, the form must be signed and submitted by an adult residing in the assisted dwelling unit who is responsible for the child. The consent form shall provide that:

(i) Any evidence submitted by the individual may be released by the PHA to HUD.

(ii) Such evidence may be released by the PHA to a Federal, State, or local agency for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, or investigation or prosecution of fraud in connection with

any Federal housing assistance program as permitted under applicable State or local laws concerning the protection of personal privacy.

(iii) HUD may release the evidence or other information to any Federal, State, or local government agency (including the Social Security Administration and the Immigration and Naturalization Service) for the following purposes: Verification of eligible immigration status, enforcement of restrictions on the availability of assistance because of such status, and investigation or prosecution of fraud in connection with any Federal housing assistance program, as permitted by the Privacy Act of 1974, 5 U.S.C. 552a. Information released to the Immigration and Naturalization Service may be used in deportation proceedings. Information may also be released by HUD as permitted by the Freedom of Information Act, 5 U.S.C. 552. HUD is not responsible for the further use or transmission of the information by the entity receiving it.

(3) *Documentation.* The following documentation requirements apply, based on the type of declaration submitted in accordance with paragraph (a)(1) of this section:

(i) Individuals declaring that they are in an eligible immigration status are required to submit evidence of such status as specified in § 912.7.

(ii) Individuals declaring that they were 62 years of age or older and receiving HUD financial assistance on the effective date of the final rule are required to submit proof of age in accordance with HUD requirements.

(iii) Individuals declaring that they are U.S. citizens are *not* required to submit evidence of citizenship, except when the PHA has reason to suspect that the individual has submitted a fraudulent declaration of citizenship, and then only in accordance with the requirements of paragraph (a)(4) of this section.

(4) *Procedures when fraud suspected with respect to citizenship.* (i) A PHA has reason to suspect that a declaration of citizenship submitted by an applicant or Family member is fraudulent if:

(A) In verifying the applicant's or Family's eligibility for financial assistance, the PHA discovers conflicting or inconsistent information regarding the identity or claimed citizenship or eligible immigration status of the applicant or Family member; or

(B) The PHA is informed that the applicant's or Family member's claimed citizenship or eligible immigration status is fraudulent. Such information must be corroborated by documentation such as copies of INS documents or deportation orders, or records establishing foreign citizenship.

(ii) When a PHA has reason to suspect that an applicant or Family member has submitted a fraudulent declaration of citizenship under § 912.6, the PHA shall require the individual to submit documentation of citizenship. If the documentation fails to establish citizenship, as specified under HUD requirements, the PHA shall deny or terminate assistance in accordance with § 912.9. Where an individual has received the benefit of a substantial amount of HUD financial assistance to which he or she was not entitled because the individual intentionally misrepresented eligibility on the basis of citizenship and recovery of the funds cannot be achieved by administrative action, the PHA may refer the case to the HUD Regional Inspector General's office for further investigation. Possible criminal prosecution may follow, based on the False Statements Act, 18 U.S.C. 1001 and 1010.

(b) *Notice to applicants and Family.*—(1) *Type of notice.* (i) the PHA shall notify applicants of the requirement to submit evidence of citizenship or eligible immigration status at the time an application for financial assistance is submitted. Applicants whose names are on a waiting list on the effective date of final rule must also be notified of these requirements. Notification to the Family of the requirement to submit evidence shall coincide with the PHA's regular notice to the Family concerning verification of income.

(ii) The PHA shall notify applicants and the Family that financial assistance is contingent upon the submission and verification, as appropriate, of the evidence referred to in paragraph (a) of this section.

(2) *Form of notice.* A notice under this section of the requirement to submit evidence of citizenship or eligible immigration status shall describe the type of evidence that must be submitted and shall state when the evidence must be submitted. The notice shall be given in accordance with HUD requirements.

(c) *Recipient of evidence.* The required evidence shall be submitted by the applicant or Family to the PHA. The PHA is responsible for administering the restrictions on providing assistance to ineligible aliens, and shall exercise this responsibility in accordance with HUD requirements.

(d) *Failure to submit evidence.* Failure to submit required evidence of citizenship or eligible immigration status shall result in denial or termination of financial assistance in accordance with the procedures of §§ 912.8 through 912.10.

(e) *Frequency of Evidence Submission Requirements.*—(1) *Regular reexamination.* A Family shall submit the required evidence at the first regular reexamination after [the effective date of the final rule], in accordance with the requirements of § 960.209(a). Thereafter, a Family (except as provided in paragraph (f) of this section concerning continuous assisted occupancy either by a citizen or an individual 62 years of age or older receiving HUD financial assistance on [the effective date of the final rule] shall submit the required evidence of eligible immigration status at each regular annual reexamination.

(2) *Interim reexamination.* A Family shall request the PHA's approval for occupancy of the assisted dwelling unit by any additional person, and the PHA shall not approve occupancy by the additional person until the written declaration required under § 912.6(a) and any required evidence of eligible immigration status together with the signed verification consent form are submitted and verified, as appropriate in accordance with the procedures of §§ 912.8 and 960.209(b).

(f) *One-time evidence requirement.* Submission of evidence that an occupant of the assisted dwelling unit is a citizen, or that as of [the effective date of the final rule] the occupant was 62 years of age or older and receiving HUD financial assistance, is only required one time during continuously assisted occupancy under any covered program.

§ 912.7 Documents of eligible immigration status.

The original of one of the following documents is acceptable evidence of eligible immigration status, subject to verification in accordance with § 912.8:

(a) Form I–151 (issued before 1979), I–551, or AR–3a (issued during 1941–1949), Alien Registration Receipt Card (for permanent resident aliens);

(b) Form I–181B or passport, stamped "Processed for I–551, temporary evidence of lawful admission for permanent residence" (for permanent resident aliens);

(c) Form I–94, Arrival-Departure Record, annotated with one of the following:

(1) "Section 207" or "Refugee";

(2) "Section 208" or "Asylum"; or

(3) "Section 243(h)" or "Deportation stayed by Attorney General";

(d) Form I–94, Arrival-Departure Record—Parole Edition, annotated with one of the following:

(1) "Section 212(d)(5)" or "Admitted at Attorney General Discretion";

(2) "Conditional Entry" or "Section 203(a)(7)" (before April 1, 1980);

(e) Form I–688, Temporary Resident Card, or I–688A, Employment

Authorization (both of which documents expire), either of which must be annotated "Section 245A";

(f) A receipt issued by the INS indicating that an application for issuance of a replacement document in one of the above-listed categories has been made and the applicant's entitlement to the document has been verified; or

(g) Any other document specified by HUD in a notice published in the Federal Register.

§ 912.6 Verification of eligible immigration status.

(a) *General procedures.* After notice of the requirement to submit evidence is provided to an applicant or tenant under § 912.6(b), the PHA shall continue to process the applicant for purposes of establishing eligibility for program participation without regard to immigration status, if the applicant otherwise qualifies for such assistance. In addition, the PHA shall verify the immigration status of aliens as follows:

(1) *Primary verification.* (i) Primary verification of the immigration status of each applicant and tenant with the Immigration and Naturalization Service (INS) is conducted by means of an automated system that provides access to alien names, file numbers and admission numbers.

(ii) The INS document submitted by the Family to establish a Family member's eligible immigration status must contain a photograph, or the PHA shall request another document bearing a photograph to ensure the identity of the alien.

(iii) The PHA shall not deny or terminate financial assistance on the basis of an applicant's or Family member's immigration status if the primary verification system indicates that the applicant or Family member has eligible immigration status.

(2) *Secondary verification* (Appeal). (i) Secondary verification provides an appeal of the primary verification determination through a manual search of INS alien files. A PHA institutes secondary verification by forwarding photocopies of the original INS documents listed at § 912.7 (front and back), attached to Document Verification Request Form G–845, to a designated INS field office for review.

(ii) The PHA shall promptly institute secondary verification whenever:

(A) Primary verification is either unavailable to, or not feasible for use by, the PHA;

(B) Primary verification instructs the PHA to institute secondary verification;

(C) Primary verification is unable to verify the immigration status of the applicant or Family member;

(D) Documents are submitted by the applicant or Family that indicate immigration status, but do not contain an "A–number"; or

(E) An INS receipt is submitted as documentation.

(iii) Pending the outcome of secondary verification under paragraph (a)(2)(ii) of this section, the PHA is required to:

(A) Continue to process the applicant for purposes of establishing eligibility for program participation, if the applicant otherwise qualifies. However, no applicant may be admitted to a program until eligible immigration status is verified through the INS. In cases where eligibility is established before verification of eligible immigration status, the PHA shall place the applicant's name on any waiting list and shall allow the applicant to accrue priority on the list pending the verification determination.

(B) Continue to permit program participation of any Family, if the Family otherwise qualifies for such assistance.

(b) *Liability for PHA for INS verification.* The PHA shall not be liable for any action, delay, or failure of the INS to conduct the automated or manual verification referred to in paragraphs (a)(1) and (2) of this section.

§ 912.9 Denial or termination of assistance.

(a) *Denial of Assistance.* The PHA shall not admit an applicant, or permit occupancy by any Family, unless evidence of citizenship or eligible immigration status has been submitted by each Family member to the PHA, and verified in accordance with § 912.8.

(b) *Procedures for denial of assistance.* (1) If the applicant fails to submit evidence of citizenship or eligible immigration status, as provided under § 912.6, or if the INS verification system under § 912.8 establishes that the applicant does not have eligible immigration status, the PHA shall deny admission to the applicant in accordance with the hearing requirements of § 960.207. At the hearing, the applicant will be provided an opportunity to present evidence of citizenship (if required under § 912.8(b)), or of an INS determination of eligible immigration status, as described in § 912.7.

(2) The PHA must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the applicant's request for an informal hearing on the initial determination of ineligibility; and the PHA's written determination following the informal hearing under § 960.207.

(c) *Termination of tenancy.* (1) Prior to termination of tenancy or termination of the homeownership agreement, the tenant or homebuyer shall have an opportunity to present evidence of citizenship (if required under § 912.8(b)), or of an INS determination of eligible immigration status, in accordance with § 912.7.

(2) The PHA must keep the following materials on file for at least three years: The application for financial assistance; photocopies of any documents submitted (front and back); the signed verification consent form; INS verification results; the family's request for an informal hearing on the initial determination of ineligibility; and the PHA's written determination following the informal hearing under Part 966.

(3) *Termination events.* Upon the occurrence of any of the following events, the PHA shall initiate promptly, and shall diligently pursue, action in accordance with Part 966 to terminate the tenancy, and to evict the family by judicial action pursuant to State and local law (or, in the case of homeownership agreements under Part 904 or 905, to terminate the agreement and convert the homebuyer to the rental program).

(i) If, after notice under § 912.6 is provided of the duty to submit evidence of citizenship or eligible immigration status, the family fails to provide such evidence for each family member at annual re-examination;

(ii) If the family fails to obtain PHA approval for occupancy of the dwelling unit by any additional person; or

(iii) If the INS verification system described in § 912.8 establishes that a family member does not have eligible immigration status;

(iv) If the PHA has admitted a family, but the PHA is subsequently informed by HUD, or otherwise determines, in accordance with § 912.8, that the evidence of citizenship or eligible immigration status was fraudulently obtained or submitted, or is otherwise not valid or authentic evidence of such status.

(4) *When termination is not required.* *(i)* The PHA may not terminate participation if any person for whom required evidence has not been submitted by the family has moved from the assisted dwelling unit.

(ii) The PHA may not terminate participation if any person determined

not to be in an eligible immigration status following verification under § 912.8, has moved from the assisted dwelling unit.

(iii) The PHA may not terminate participation if any person who signed a fraudulent declaration of citizenship or eligible immigration status has moved from the unit.

(iv) Instead of terminating participation when evidence of citizenship or eligible immigration status has not been submitted at a regular reexamination or an interim reexamination (i.e., for a new occupant), the PHA may grant an extension of time for submission of the required evidence.

(A) The PHA may, in its own discretion, grant an extension if:

(1) The Family submits the declaration required under § 912.6(a), certifying that any person for whom required evidence has not been submitted is an alien with eligible immigration status, but shows that the evidence needed to support a claim of eligible immigration status is temporarily unavailable, and that additional time is needed to obtain and submit the evidence; and

(2) The Family promises to make prompt and diligent efforts to obtain the evidence.

(B) An extension under paragraph (c)(4)(iv) of this section shall be for a specific period needed to obtain the evidence. Where the Family is required (under § 912.6) to submit the evidence at an annual reexamination, any extension(s) granted by the PHA shall not allow submission of the evidence beyond ninety days after the effective date of the reexamination. Where the family is required to request the PHA's approval for occupancy of the dwelling unit by an additional person, any extension(s) granted by the PHA shall not allow submission of the evidence beyond ninety days after occupancy by the additional person.

(C) The PHA's decision to grant an extension of time for the Family to submit the evidence, and the PHA's determination of the length of the extension, shall be made after considering the facts and circumstances of the individual case. The Family shall not have any right to an extension, and the PHA may revoke an extension if the Family is not making diligent efforts to obtain the evidence, and if there is no reasonable likelihood that the Family will be able to submit the evidence during the extension.

(D) If the Family has not submitted the evidence by the end of the 90-day extension, the PHA shall promptly terminate the tenancy in accordance with Part 966. The PHA's decision to grant an extension shall be in writing, and shall state the reasons for the PHA's determination.

(5) *Resumption of participation.* The PHA may halt action to terminate tenancy or the homeownership agreement if:

(i) All required evidence has been submitted by the family to the PHA; and

(ii) Continuation of participation is authorized in accordance with HUD requirements.

§ 912.10 Special provisions for preservation of mixed families and other families in occupancy on [the effective date of the final rule].

(a) When a PHA would otherwise be required to terminate assistance to a Family because of the status of an individual who was receiving financial assistance on [*the effective date of the final rule*] (following the provision of a hearing in accordance with Part 966, if requested), the PHA may exercise its discretion to provide relief under this section. The PHA should adopt criteria appropriate to its locality for the exercise of discretion to permit continued participation of some Families as authorized by paragraph (b) of this section and to defer termination of participation of other Families as authorized by paragraph (c) of this section.

(b) If the individual lacking eligible status, as described in § 912.5, is a member of a Family in which the head of household or spouse has eligible status, the PHA may continue to permit the Family to participate in the program indefinitely if it is necessary to avoid division of the family. In making this determination, the PHA must consider only what is necessary to avoid division of the "family" consisting of the head of household, any spouse, and any parents or children of the head of household or spouse. The decision to continue assistance on behalf of such an individual will be made once and need not be reconsidered thereafter.

(1) If the Family demonstrates that reasonable efforts to find other affordable housing of appropriate size have been unsuccessful, this evidence will be sufficient for the PHA to determine that continued participation is necessary to avoid division of the Family.

(2) If some members of the Family do not qualify as members of the "family" that is not to be divided, as described above, continued participation may be permitted under this section only if the persons not qualifying as "family" members move out of the unit within the period stated in the final determination of ineligible status.

(c) The PHA may temporarily defer termination of participation where it determines that deferral is necessary to permit the orderly transition of the ineligible individual and family members involved to other affordable housing. If such a deferral is warranted, it shall be for a six-month period. A deferral period may be renewed for an additional period of six months if warranted, but the aggregate deferral period may not exceed three years.

(1) At the beginning of each deferral period, the PHA must inform the Family of its ineligibility for continued participation and offer the Family information and referrals to assist in finding other affordable housing.

(2) If, during a deferral period, the status of the head of household or spouse changes and he or she is able to establish eligible status the Family either will be determined fully eligible (if all family members are also eligible) or may be considered for discretionary continuation of participation under paragraph (b) of this section.

§ 912.11 Specific prohibition on participation of nonimmigrant student aliens.

The provisions of § 912.10, permitting continuation of participation or deferral of termination of program participation for certain Families, do not authorize relief with respect to any individual who is determined to be a nonimmigrant student alien. For this purpose, a nonimmigrant student alien is defined as any alien who has a residence in a foreign country that such alien has no intention of abandoning; who is a bona fide student qualified to pursue a full course of study; and who is admitted to the United States temporarily and solely for purposes of pursuing such a course of study at an established institution of learning or other recognized place of study in the United States, particularly designated by such alien and approved by the Attorney General after consultation with the Department of Education of the United States, which institution or place of study shall have agreed to report to the Attorney General the termination of attendance of each nonimmigrant student (and if any such institution of learning or place of study fails to make such reports promptly the approval shall be withdrawn); and the alien spouse and minor children of any alien described above, if the spouse or children are accompanying such alien or following to join such alien.

§ 912.12 Protection from liability for PHAs, State and local government agencies and officials.

(a) *Protection from liability for PHAs.* HUD shall not take any compliance, disallowance, penalty, or other regulatory action against a PHA with respect to any error in its determination to make an individual eligible for program participation based on citizenship or immigration status:

(1) If the PHA established eligibility based upon a verification of eligible immigration status through the INS' primary or manual verification system, as described in § 912.8;

(2) If the PHA was required to provide an opportunity for the applicant or tenant to submit evidence in accordance with § 912.6;

(3) If the PHA was required to wait for a response from the INS to the request for verification of eligible immigration status in accordance with § 912.8; or

(4) If the PHA as required to provide the informal hearing under § 960.207 (denial of assistance) or Part 966 (termination of tenancy).

(b) *Protection from liability for State and local government agencies and officials.* State and local government agencies and officials shall not be liable for the design or implementation of the verification system under § 912.8 and the informal hearing provided under § 960.207 and Part 966, so long as the implementation by the State or local government agency or official is in accordance with prescribed HUD rules and regulations.

PART 960—ADMISSION TO AND OCCUPANCY OF PUBLIC HOUSING

82. The authority citation for Part 960 would continue to read as follows:

Authority: United States Housing Act of 1937 (42 U.S.C. 1437–1437c); sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

83. In § 960.204, paragraphs (a), (c)(1), and (d)(4) would be revised, to read as follows (c) and (d) introductory texts are republished):

§ 960.204 PHA tenant selection policies.

(a) In addition to policies and regulations including preferences and priorities established by the PHA for eligibility and admission to its public housing projects pursuant to the Act, the ACC, and Parts 912 and 913 of this chapter, each PHA shall adopt and implement policies and procedures embodying standards and criteria for tenant selection which take into consideration the needs of individuals families for public housing and the statutory purpose in developing and operating socially and financially sound public housing projects that provide a decent home and a suitable living environment and foster economic and social diversity in the tenant body as a whole.

* * * * *

(c) Such policies and procedures shall: (1) Not automatically deny admission to a particular group or category of otherwise eligible applicants (e.g., unwed mothers or families with children born out of wedlock). However, applicants who are unable to establish eligible immigration status, in accordance with the requirements of Part 912, are not eligible applicants for purposes of this part.

* * * * *

(d) Such policies and procedures shall:

* * * * *

(4) Provide for verification and documentation of information relevant to acceptance or rejection of an applicant, including documentation and verification of citizenship and eligible immigration status under Part 912.

* * * * *

84. In § 960.206, paragraph (a) would be revised to read as follows:

§ 960.206 Verification procedures.

(a) *General.* Adequate procedures shall be developed to obtain and verify information with respect to each applicant (See § 913.109), including information about citizenship and eligible immigration status required under Part 912. Information relative to the acceptance or rejection of an applicant or the grant or denial of a Federal prefers under § 960.21 shall be documented and placed in the applicant's file.

* * * * *

85. Section 960.209 would be amended by adding two sentences at the end of paragraph (a), by adding one sentence at the end of paragraph (b), and by adding a new paragraph (c), to read as follows:

§ 960.209 Reexamination of family income and composition.

(a) * * * At the first regular reexamination after [*the effective date of the final rule*], the PHA must follow the requirements of Part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of all family members. Thereafter, at each regular reexamination, the PHA must follow the requirements of that part concerning verification of the immigration status of any family member who is not a citizen, as defined in § 912.2, except for family members who were at least 62 years of age and participating in a HUD-assisted housing program on [the effective date of the final rule].

(b) * * * At any interim reexamination after [*the effective date of the final rule*] that involves the addition of a new family member (except by the birth of a child), the PHA must follow the requirements of Part 912 concerning obtaining and processing information on the citizenship or eligible immigration status of the new family member.

(c) *Termination.* For provisions requiring termination of participation for failure to establish citizenship or eligible immigration status, see Part 912.

Dated: September 8, 1988.

Samuel R. Pierce, Jr.

Secretary.

[FR Doc. 88–23619 Filed 10–18–88; 8:45 am]

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federal register

Wednesday
October 19, 1988

Part IV

Department of Education

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program; Final Regulations

DEPARTMENT OF EDUCATION

34 CFR Parts 330 and 331

Captioned Films Loan Service for the Deaf Program and Educational Media Loan Service for the Handicapped Program

AGENCY: Department of Education.

ACTION: Final regulations.

SUMMARY: This Secretary amends the regulations for the Captioned Films Loan Service for the Deaf Program and the Educational Media Loan Service for the Handicapped Program. These regulations clarify that the purpose of these programs includes addressing the problems of illiteracy among persons with handicaps.

EFFECTIVE DATE: These regulations take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these regulations, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: Joseph Clair, Office of Special Education Programs, Department of Education, 400 Maryland Avenue, SW. (Switzer Building, Room 4622–M/S 2312), Washington, DC 20202. Telephone: (202) 732–4503.

SUPPLEMENTARY INFORMATION: On March 15, 1988, at 53 FR 8608, the Secretary published a notice of proposed rulemaking (NPRM) for the Captioned Films Loan Service for the Deaf program and the Educational Media Loan Service for the Handicapped program.

The Captioned Films Loan Service for the Deaf program and the Educational Media Loan Service for the Handicapped program are authorized by Part F of the Education of the Handicapped Act (20 U.S.C. 1451, 1452 and 1454). Section 652 of the Act was amended by section 315 of the Education of the Handicapped Act Amendments of 1986 (Pub. L. 99–457). The amendments to section 652(a) of the Act provide that the purpose of the two programs includes addressing problems of illiteracy among deaf individuals and individuals with other handicaps. The amendments also provide that public libraries may be used for the distribution of captioned films and educational media.

In addition, the regulations for these two programs at 34 CFR Parts 330 and 331 have been reviewed for the purpose of deregulation. This review has resulted in the removal of the provisions on how to obtain applications for borrowing captioned films and educational media because these provisions are informational, not regulatory. The cross references to EDGAR in the definitions and applicable regulations have been removed because they are not applicable to either of these programs. The regulations also are simplified to provide that the sum of any fees collected by borrowers of captioned film and media may not exceed reasonable overhead expenses.

Analysis of Comments and Responses

In response to the Secretary's invitation in the NPRM, five comments were submitted on the proposed regulations. An analysis of the comments and the Department's response follows:

Comment: Concerns were expressed over the perceived expansion of the Captioned Films Loan Service for the Deaf program to serve individuals with handicaps other than deafness, at the expense of the hearing-impaired.

Discussion: Confusion may have arisen due to the fact that the 1986 Amendments authorizing the Department to build a literacy component into the loan service programs necessitated changes to two separate regulations, i.e., 34 CFR Part 330 (Captioned Films Loan Service for the Deaf Program) and 34 CFR Part 331 (Educational Media Loan Service for the Handicapped Program). In expanding the purposes provisions of both §§ 330.1 and 331.1 to reflect the statutory change, the NPRM used the language "addressing the problems of illiteracy among the handicapped".

In order to avoid any possible misunderstanding regarding the scope of 34 CFR Part 330, the Department has changed the language in § 330.1(d) to read "addressing the problems of illiteracy among the deaf," while retaining the original proposed language § 331.1. This change is made to remove any possible confusion whether § 330.1(d) has been expanded beyond addressing illiteracy among the deaf, which it has not.

Changes: Language has been changed to limit § 330.1(d) to addressing illiteracy among the deaf.

Comment: Concerns were expressed over the capacity of public libraries to serve as distribution centers for captioned films. Specifically, concern was expressed that librarians are not media specialists and hence lack the training and experience to manage captioned film depositories. Questions were also raised as to the storage capacity of libraries and the wisdom of establishing a duplicative distribution system.

Discussion: As noted in the preamble to the NPRM, Congress added public libraries to the distribution system for both captioned films and educational media. However, this amendment did not necessitate a corresponding change to the regulations in either Part 330 or 331 since the regulations cover only the conditions that deaf and otherwise handicapped borrowers must meet in order to obtain films and other educational media. Therefore, comments to the effect that libraries either are not geared up to serve as film or media depositories or might unnecessarily duplicate the existing distribution network do not require any change to the proposed regulations. The Department would note, however, that the legislative history makes clear the intent of Congress that the use of libraries as distribution centers is optional.

Changes: None.

Executive Order 12291

These amendments to the regulations have been reviewed in accordance with the Executive Order 12291. They are not classified as major because they do not meet the criteria for major regulations established in the order.

Paperwork Reduction Act of 1980

These final regulations have been examined under the Paperwork Reduction Act of 1980 and have been found to contain no information collection requirements.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR Part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the Order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Assessment of Educational Impact

Based on the response to the proposed rules and on its own review, the Department has determined that the regulations in this document do not require transmission of information that is being gathered by or is available from any other agency or authority of the United States.

List of Subjects in 34 CFR Parts 330 and 331

Education, Education of Handicapped, Motion Pictures.

(Catalog of Federal Domestic Assistance No. 84.026; Handicapped Media Services and Captioned Films)

Dated: October 13, 1988.

Lauro F. Cavazos,

Secretary of Education.

The Secretary amends Parts 330 and 331 of Title 34 of the Code of Federal Regulations as follows:

PART 330—CAPTIONED FILMS LOAN SERVICE FOR THE DEAF PROGRAM

1. The authority citation for Part 330 is revised to read as follows:

Authority: 20 U.S.C. 1451, 1452, unless otherwise noted.

2. In § 330.1, paragraph (b) is amended by removing the word "and" following the semicolon at the end of the paragraph, paragraph (c) is amended by removing the period at the end of the paragraph and adding, in its place, "; and", and a new paragraph (d) and authority citation are added to read as follows:

§ 330.1 Captioned Films Loan Service for the Deaf program.

* * * * *

(d) Addressing the problems of illiteracy among the deaf.

(Authority: 20 U.S.C. 1451, 1452)

§ 330.3 [Removed and Reserved]

3. Section 330.3 is removed and reserved.

§ 330.4 [Amended]

4. Section 330.4 is amended by removing paragraph (a), by removing "(b) *Specific program definitions:*" and adding, in its place, "The following definitions apply to terms used in this part:"; and by removing " 'Act' means the Education of the Handicapped Act (Title VI of Pub. L. 91–230 as amended)" and adding, in its place, " 'Act' means the Education of the Handicapped Act.".

§ 330.30 [Removed and Reserved]

5. Section 330.30 is removed and Subpart C is reserved.

6. Section 330.50 is amended by revising paragraph (a), removing paragraph (b), and redesignating paragraph (c) as paragraph (b) to read as follows:

§ 330.50 What are the limitations on the use of the loan service?

(a) A borrower shall use the captioned films for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for use of the films may not exceed the reasonable expense incurred by the borrower in showing the films to eligible viewers.

* * * * *

PART 331—EDUCATIONAL MEDIA LOAN SERVICE FOR THE HANDICAPPED PROGRAM

7. The authority citation for Part 331 is revised to read as follows:

Authority: 20 U.S.C. 1452, unless otherwise noted.

§ 331.1 [Amended]

8. Section 331.1 is amended by removing the period at the end of the sentence and adding, in its place, ", including for the purpose of addressing illiteracy among the handicapped."

§ 331.3 [Removed and Reserved]

9. Section 331.3 is removed and reserved.

§ 331.4 [Amended]

10. Section 331.4 is amended by removing paragraph (a), by removing "(b) *Specific program definitions:*" and adding, in its place, "The following definitions apply to the terms used in this part:"; and by removing " "Act" means the Education of the Handicapped Act (Title VI of Pub. L. 91–230 as amended)" and adding, in its place, " "Act" means the Education of the Handicapped Act.".

Subpart C—[Reserved]

§ 331.30 [Removed and Reserved]

11. Section 331.30 is removed and Subpart C is reserved.

12. Section 331.50 is revised to read as follows:

§ 331.50 What are the limitations on the use of the loan service?

A borrower shall use the educational media for nonprofit purposes only. Moreover, the sum of any fees collected by the borrower for the use of the educational media may not exceed the reasonable expenses incurred by the borrower in exhibiting the media to eligible parties.

(Authority: 20 U.S.C. 1452(a))

[FR Doc. 88–24071 Filed 10–18–88; 8:45 am]

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Wednesday
October 19, 1988

Part V

Department of Health and Human Services

Office of Human
Development Services

45 CFR Parts 1304, 1305, and 1308

Head Start Program; Notice of Proposed Rulemaking

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Human Development Services

45 CFR Parts 1304, 1305, and 1308

Head Start Program

AGENCY: Administration for Children, Youth and Families (ACYF), Office of Human Development Services (OHDS), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The proposed regulations will add a new Part 1308 to the existing regulations governing Head Start grantee and delegate agency policies pertaining to services to children with handicaps enrolled in the Head Start program. The regulations set forth specific standards, including diagnostic criteria, and provide guidance to Head Start grantees and delegate agencies. Specifically, these regulations will require Head Start programs to:

—Design comprehensive services which meet program standards for locating and serving handicapped children and their parents;

—Develop an individualized education program (IEP) to provide appropriate special services for each child who is certified as having a handicap;

—Screen children within 45 days of admission to the Head Start program, rather than the 90 days currently recommended, in order that services may be provided in a timely manner;

—Use revised diagnostic criteria to determine a child's eligibility for and to assist in obtaining special education and related services;

—Designate a coordinator of services for handicapped children with specific responsibilities; and

—Operate in accordance with current guidance on the use of Program Account (PA) 26 funds for special services for children who have handicaps.

In addition, we are proposing changes in Parts 1304 and 1305 to: (1) Assure that services are provided promptly to such children; and (2) make technical and conforming changes to comport with Part 1308 and with changes in the definition of handicapped children in the Education of the Handicapped Act, as amended.

DATES: In order to be considered, comments on this prposed rule must be received on or before December 19, 1988.

ADDRESSES: Please address comments to: Elizabeth Strong Ussery, Associate Commissioner, Head Start Bureau, Administration for Children, Youth and Families, P.O. Box 1182, Washington, DC 20013. Attention: Jane DeWeerd.

It would be helpful if agencies and organizations would submit their comments in duplicate. Beginning November 2, 1988, comments will be available for public inspection in Room 5754, 400 6th Street SW., Washington, DC 20201, Monday through Friday between the hours of 9:00 a.m. and 4:00 p.m.

FOR FURTHER INFORMATION CONTACT: Jane DeWeerd, (202) 755–7944.

SUPPLEMENTARY INFORMATION:

I. Program Description

Head Start, as authorized under the Head Start Act (the Act), is a national program providing comprehensive child development services. These services are provided primarily to low-income children, age three to five, and their families. To help enrolled children achieve their full potential, Head Start programs provide comprehensive health, nutritional, educational, social and other services. In addition, Head Start programs are required to provide for the direct participation of parents of enrolled children. Parents receive training and education that fosters their understanding of an involvement in the development of their children. They also become involved in the development, conduct, and direction of local programs. In fiscal year 1987, Head Start was funded to serve 446,523 children through a network of approximately 1,290 grantees and 620 delegate agencies. During the year, 514,981 children received some services. This includes those who dropped out. Delegate agencies have approved written agreements with grantees to operate Head Start programs.

While Head Start is intended to serve primarily low-income children and their families, Head Start's regulations permit up to 10 percent of the children in local programs to be from families that are not low-income. The Act requries that a minimum of 10 percent of enrollment opportunities in each State be made available to handicapped children. Such children are expected to participate in the full range of Head Start activities with their non-handicapped peers, and to receive needed special education and related services.

Each grantee is required to report annually on the services provided to children with handicaps as part of the Head Start Program Information Report (PIR). An annual report is provided also to Congress as required by section 640(d) of the Head Start Act. In FY 1987, Head Start served 65,275 children who were certified by professionals as handicapped. This constituted 12.7 percent of the total enrollment.

II. Head Start Services to Handicapped Children

Beginning in 1972, Head Start mounted a major initiative to provide services to handicapped children. It is now the largest provider of services for preschool children with handicapping conditions in a mainstream setting in the nation. Since that time, the number of children receiving services has nearly tripled. In 1973, when data were first reported, 22,807 children were served; in contrast, 65,275 were served in 1987.

During those early years, advances were made in providing services to preschool children with handicaps and helping Head Start programs improve their ability to meet individual special needs of handicapped children. Recent research and demonstration activities have provided new information on effective practices in working not only with handicapped children, but also with their parents. Improvements have occurred in the ability to assess how a child is functioning in the motor, communication, social and cognitive areas; in the development of technology to help young children with handicaps meet their potential; and in curriculum development and program evaluation. Also, new evidence of the importance of early assistance and of the role of parents in programs for children with handicaps has become available. We have attempted to incorporate these new developments into this proposed rule.

Head Start services to handicapped children are delivered in the context of and influenced by requirements in section 504 of the Rehabilitation Act of 1973 and the Education of the Handicapped Act, Pub. L. 94–142 and its amendments.

As a result of this legislation and other advocacy efforts, during the last decade many States have passed laws requiring that services be provided to younger children with handicaps. Special education and related services, such as physical therapy, have become more widely available for preschool age children. Given the increased availability of services, more Head Start programs provide services by a combination of Head Start staff and personnel from other agencies. Coordination with specialized community agencies has become necessary to make the best use of limited resources. Currently, 54% of enrolled handicapped children receive services from both Head Start and other agencies.

III. Provisions of the NPRM

Currently, all Head Start programs must meet the requirements of the Program Performance Standards as specified in the regulations at 45 CFR 1304.2–2, 1304.3–3(b)(10), 1304.3–4(a)(1) and 1304.3–8(a)(5). These regulations clearly define the services for non-handicapped children. Based on the definition of handicapped children, some standards for services to children with handicaps and services to meet the special needs of their parents were distributed to grantees between 1973 and 1983 through various transmittal memoranda and other policy issuances. However, no standards have ever been set forth in regulation. The new part 1308 will propose specific standards, including diagnostic criteria, and offer general guidance for the provision of services to children with handicaps and services to meet the special needs of their parents. Specifically, these regulations will require Head Start programs to:

—Design comprehensive services which meet program standards for locating and serving handicapped children and their parents;

—Develop an individualized education program (IEP) to provide appropriate special services for each child who is certified as having a handicap;

—Screen children within 45 days of admission to the Head Start program, rather than within 90 days as currently recommended, in order that services may be provided in a timely manner;

—Use revised diagnostic criteria to determine eligibility for and to assist in obtaining special education and related services;

—Designate a coordinator of services for handicapped children, with specific responsibilities; and

—Operate in accordance with standard guidance on the use of PA 26 funds for special services for children who have handicaps.

These proposed regulations also include some technical amendments to certain sections of 45 CFR Parts 1304 and 1305 which are mandated by legislative amendments. In addition, we are proposing changes in Parts 1304 and 1305 to: (1) Assure that services are provided promptly to handicapped children; and (2) make technical and conforming changes to comport with Part 1308 and with changes in the definition of handicapped children in the Education of the Handicapped Act.

When this NPRM is published as a final rule the following transmittals and policy issuances will be rescinded:

1. Head Start Services to Handicapped Children: Transmittal Notice 73.4 issued as OCD Notice N–30–333–1–00 by the Office of Child Development (the predecessor agency to ACYF), 1973.

2. Announcement of Criteria for Reporting Handicapped Children in Head Start: Transmittal Notice 75.11, 1975.

3. The Application of the Rehabilitation Act of 1973 to Head Start, Transmittal Notice 80.4, 1977.

IV. Development of the NPRM

During 1984 and 1985, extensive consultation was held with the field concerning the adequacy and usefulness of the current diagnostic criteria described in Transmittal Notice 75.11, issued September 11, 1975, and on the comprehensiveness of the guidance in Transmittal Notice 73.4, issued February 28, 1973, on services to children with handicaps. Head Start directors, coordinators, professional organizations, and technical assistance providers of Head Start services for handicapped children provided suggestions, comments, and recommendations. The comments indicated that:

—Correlating and combining the various pieces of information currently available is difficult for Head Start grantees;

—Existing diagnostic criteria are not useful for some diagnosticians or staff and are not acceptable to some parents;

—The Performance Standards now in effect which pertain to all children do not provide sufficient information on meeting the special needs of children with disabilities and their families;

—Existing information to grantees does not take into account the many advances in the state of the art in the last decade or the changes in Federal and State legislation during this same period which affect Head Start or provide sufficient assistance in the difficult area of coordination; and

—Existing information does not incorporate the results of Head Start experience in serving low income children with handicaps over the past decade or provide procedures for appropriate use of PA 26 funds for special services for children with handicaps.

These findings led us to believe that an NPRM should be developed given the recent advances in professional knowledge and research and demonstration findings and the wealth of knowledge, experience and expertise evidenced in the recommendations made. Our aim was to incorporate appropriate and still useful material from past policy issuances into regulation, update the diagnostic criteria, and spell out minimum standards all grantees must follow in providing services to handicapped children.

We had three options in developing new diagnostic criteria: (a) Continuing to use the current criteria; (b) using a general non-categorical criterion such as "in need of special education and related services;" and (c) proposing revised criteria.

We did not select the first option, for several reasons. Foremost among them were the concerns of professional and local Head Start personnel who had problems with the current criteria. For example, some diagnosticians stated that they would not use the term "learning disabled" with children younger than five and some parents found the term "seriously emotionally disturbed" unacceptable.

In addition, we reviewed the experience of State Education Agencies and some local public schools and found that a number of them have developed alternative criteria for preschool program planning purposes.

A second option was to use only a broad general category such as "in need of special education." This would have assured that no child would be categorized as having a handicap, but it would not have provided sufficient information to assure that appropriate services were provided for each individual child. Such a broad criterion would have made it very difficult for programs to assure that children with handicaps, rather than children who may lag in development as a result of lack of opportunity or experience, would receive specialized services designed to lessen or overcome the results of handicapping conditions. Therefore, this option was not selected.

The third option of proposing revised diagnostic criteria was selected. We believe that the proposed criteria respond to the concerns expressed by grantee and delegate agencies and reflect experience and changes in the field over the past decade. We also believe they are easier to use, more specific, and timely. We are augmenting the proposed criteria with guidance to increase emphasis on the prevention of later learning problems through added attention to high-risk children.

This proposed rule provides specific standards and guidance on services for children with handicaps and their families. We welcome and solicit comments on this NPRM.

V. How the NPRM Is Structured

The proposed performance standards are found in a new Part 1308. Under this proposed regulation, no child who would be eligible for services under the current diagnostic criteria will be denied special services. Nor should any child be classified as handicapped who would not be categorized as handicapped under the current diagnostic criteria.

At the end of the new Part, we have added an Appendix which contains programmatic guidance for certain sections of the rule. This guidance provides explanatory material and includes recommendations or suggestions for meeting the requirements. However, the guidance is not binding on Head Start grantees or delegate agencies. In instances where a permissible course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirements. We have included this programmatic guidance as an aid to grantees because of the complexity of providing special services to meet the needs of children with various handicaps.

VI. Section by Section Discussion of the NPPM

We propose to issue standards for services to children with handicaps as Part 1308. The new Part 1308 contains eighteen sections, with guidelines included after all but five of the sections.

Sections 1308.1 and 1308.2 Purpose and scope.

These first two sections explain that Head Start grantees and delegate agencies must meet the requirements of Part 1308.

Section 1308.3 Definitions.

This section proposes definitions for certain key words that are used throughout Part 1308. They include such terms as "handicapped children," "diagnostic criteria," "special education" and Mainstreaming."

Section 1308.4 Handicap services plan.

This section is proposed in order to assure that each Head Start program has a plan for providing services to children with handicaps in an organized manner.

Section 1308.5 Developing individual education programs.

This section proposes to require Head Start programs to develop an IEP for each handicapped child that will provide for the child's special needs. It specifies that IEP should include, among other things, statements of the child's present level of functioning, annual goals, activities to meet the goals and dates for initiation of the activities. It also requires that a team, consisting of the Head Start coordinator of services for handicapped children, the child's teacher or home visitor, and others develop the IEP, with parental involvement.

Section 1308.6 Evaluation of children.

Experience indicates that the existing guidelines which recommend medical and dental screening within 90 days after enrollment sometimes result in long delays (several months) before services are provided. This section proposes timely screening of children (45 days from the date of enrollment) and further evaluation of a child who has been identified as possibly handicapped. Timely screening is important in order that special services may be provided as soon as possible. We believe 45 days is reasonable time to carry out the screening activities contained in this rule. However, we welcome comments on how this provision will affect the operation of your program. This section also provides that a team of professionals representing appropriate disciplines evaluate a child who is referred as possibly handicapped to ensure that every effort is made to obtain an accurate diagnosis.

Sections 1308.7–1308.14 Diagnostic Criteria.

Sections 1308.7 through 1308.14 contain, respectively, diagnostic criteria in the following areas: health impairment, behavior disorders, communication impairment, mental retardation, hearing impairment, orthopedic impairment, blindness and visual impairment, and other impairments meeting State eligibility criteria for services to preschool children with handicaps.

These criteria are based on the definition of "handicapped children" and utilize current professional recommendations and findings from Head Start experience. We believe they are clearer, and will be easier to use.

The purpose of diagnostic criteria in specific areas is to provide information on types and severity levels of handicapping conditions for eligibility and individual program planning purposes. The diagnostician can make recommendations on the basis of functional assessments in order that parents, teachers, and others can best work with the child to enhance his or her potential.

Section 1308.15 Handicap/health services coordination.

Because effective services for children with handicaps requires coordination across all Head Start components, this section clarifies the ways in which the handicap services coordinator is required to work with the health and mental health components in such areas as screening, identification of possible mental health problems and provision of special services for handicapped children.

Section 1308.16 Nutrition services.

This section provides that a Head Start program must consider the needs of children with handicaps in its nutrition program, e.g., provide consultation with a physical therapist to assist severely handicapped children who have problems chewing, swallowing and feeding themselves.

Section 1308.17 Recruitment and enrollment of handicapped children.

In this section, we propose to require that the Head Start outreach and recruitment effort include recruitment of handicapped children. This section also clarifies responsibilities of the coordinator of services for children with handicaps and the social services coordinator.

Section 1308.18 Parent participation and transition of children from Head Start to public school.

This proposed section requires the coordinator of services for children with handicaps who are enrolled in Head Start to offer information and assistance to their parents to foster the children's development and learning and to meet their special needs. The Head Start program in cooperation with the parent will have to notify the local school or other placement prior to the date of transfer to either of these after Head Start.

Technical Revisions to Part 1304 and Part 1305

We propose to make technical revisions to certain sections of Part 1304, Program Performance Standards for Operation of Head Start Programs by Grantees and Delegate Agencies, and Part 1305, Eligibility Requirements and Limitations for Enrollment in Head Start.

Section 1304.1–2 Definitions.

The definition of handicapped children is being amended to conform to the definition of handicapped children as defined in section 602 of the Education of the Handicapped Act, as amended, as required by section 640(d)

of the Head Start Act. When the Education of the Handicapped Act was amended by section 602 of Pub. L. 91–230, the definition of handicapped children was revised to change the word "crippled" to "orthopedically impaired," and to include children with specific learning disabilities. In 1983, when it was amended by section 2 of Pub. L. 98–199, children with "language impairments" were added. We are taking this opportunity to make these changes. (The proposed § 1308.3 contains the definition of handicapped children from the Education of the Handicapped Act.)

Section 1304.3–3 Medical and dental history, screening and examination.

We propose to require that health screening be completed within 45 days of a child's enrollment to comport with § 130.6.

Section 1305.2 Definitions.

The definition of handicapped children in paragraph (b)(3) of this section is being amended for the reasons stated above under § 1304.1–2.

VII. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory impact analysis be prepared for major rules defined in the Order as any rule that has an annual effect on the national economy of $100 million or more, or certain other specified effects. Nothing in either the statute or rule is likely to create substantial costs. The Secretary concludes that this regulation is not a major rule within the meaning of the Executive Order because it does not have an effect on the economy of $100 million or more or otherwise meet the threshold criteria.

Regulatory Flexibility Act of 1980

Consistent with the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6), we try to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities" we prepare an analysis describing the rules' impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities.

While this regulation would affect small entities, it is not substantial, and in many instances the small entities may already meet some of the requirements. For these reasons, the Secretary certifies that this rule will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Under the Paperwork Reduction Act of 1980, Pub. L. 96–511, all Departments are required to submit to the Office of Management and Budget (OMB) for review and approval any reporting or recordkeeping requirement in a proposed and final rule. This proposed rule contains information collection requirements in §§1308.4, 1308.5, 1308.6, and 1308.15 which will be submitted to OMB for review and approval in accordance with section 3504(h) of the Act. However, many Head Start programs already prepare the plans and maintain the records required.

Organizations and individuals desiring to submit comments concerning the accuracy of the burden estimate and any suggestions for reducing the burden should direct them to the agency official designated for this purpose, whose name appears in this preamble, and to the Office of Information and Regulatory Affairs, OMB, New Executive Office Building, Room 3028, Washington, DC 20503, ATTN: Desk Officer for HDS.

List of Subjects

45 CFR Part 1304

Dental health, Education of disadvantaged, Grant program/social programs, Health care, Mental health programs, Nutrition, Parental involvement, Reporting and recordkeeping requirements.

45 CFR Part 1305

Education of disadvantaged, Education of handicapped, Grant program/social programs, Handicapped.

45 CFR Part 1308

Education of the handicapped, Grant program/social programs, Parental involvement, Health care, Reporting and recordkeeping requirements.

(Catalog of Federal Domestic Assistance Program Number 13.600, Project Head Start)

Dated: July 6, 1988.

Sydney Olson,

Assistant Secretary for Human Development Services.

Approved: August 26, 1988.

Otis R. Bowen,

Secretary.

For the reasons set forth in the preamble, Title 45, Chapter XIII, Subchapter B of the Code of Federal Regulations is proposed to be amended as follows:

1. Part 1308 is added to read as follows:

PART 1308—HEAD START PERFORMANCE STANDARDS ON PROGRAM SERVICES FOR CHILDREN WITH HANDICAPS

Subpart A—General

Sec.
1308.1 Purpose.
1308.2 Scope.
1308.3 Definitions.

Subpart B—Education Services Performance Standards

1308.4 Handicap services plan.
1308.5 Developing individual education programs.

Subpart C—Health Services Performance Standards

1308.6 Evaluation of children.
1308.7 Diagnostic criteria: Health impairment.
1308.8 Diagnostic criteria: Behavior disorders.
1308.9 Diagnostic criteria: Communication impairment.
1308.10 Diagnostic criteria: Mental retardation.
1308.11 Diagnostic criteria: Hearing impairment.
1308.12 Diagnostic criteria: Orthopedic impairment.
1308.13 Diagnostic criteria: Blindness and visual impairment.
1308.14 Diagnostic criteria: Other impairments.
1308.15 Handicap/health services coordination.

Subpart D—Nutrition Performance Standards

1308.16 Nutrition services.

Subpart E—Social Services Performance Standards

1308.17 Recruitment and enrollment of handicapped children.

Subpart F—Parent Involvement Performance Standards

1308.18 Parent participation and transition of children from Head Start to public school.

Authority: 42 U.S.C. 9831 *et seq.*

Subpart A—General

Appendix to Part 1308—Head Start Performance Standards on Program Services for Children with Handicaps

§ 1308.1 Purpose.

This rule sets forth the requirements for providing special services for handicapped children enrolled in Head Start programs. These requirements are to be used in conjunction with the Head Start Program Performance Standards at 45 CFR Part 1304.

§ 1308.2 Scope.

This rule applies to all Head Start grantees and delegate agencies.

§ 1308.3 Definitions.

As used in this part:

(a) The term "ACYF" means the Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and Human Services, and includes appropriate regional office staff.

(b) The term "Commissioner" means the Commissioner of the Administration for Children, Youth and Families.

(c) The term "delegate agency" means a public or private non-profit organization or agency to which a grantee has delegated the responsibility for operating all or part of its Head Start program.

(d) The term "diagnostic criteria" means the criteria for determining that a child requires special education and related services and for planning those services.

(e) The term "grantee" means the public or private non-profit agency which has been granted financial assistance by ACYF to carry on a Head Start program.

(f) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

(g) The term "least restrictive environment" means the most appropriate placement, based on the Individual Education Program, with non-handicapped children to the maximum extent appropriate for the individual child.

(h) The term "mainstreaming" means providing appropriate educational services for children with handicaps in settings with non-handicapped peers on a full or part-time basis. It does not mean simply incorporating a child physically into the regular program with no modifications of programming to meet the child's special needs.

(i) The term "program performance standards" or "performance standards" means the Head Start program functions, activities and facilities required and necessary to meet the objectives and goals of the Head Start program as they relate directly to children and their families.

(j) The term "related services" means transportation, developmental, corrective, and other supportive services and equipment as required to assist a handicapped child to benefit from special education.

(k) The term "responsible HHS official" means the official who is authorized to make the grant of assistance in question, or his/her designee.

(l) The term "special education" means specially designed instruction to meet the unique needs of a handicapped child.

Subpart B—Education Services Performance Standards

§ 1308.4 Handicap services plan.

(a) (1) A Head Start grantee or delegate agency must develop or annually update a plan providing strategies for meeting the special needs of children with handicaps and their parents.

(2) A designated coordinator of services for children with handicaps must have the primary responsibility for preparing the plan, working with the Director, and consulting with other staff and parents.

(3) The handicap services plan must address timely screening and the further evaluation of children who may be handicapped; address accessibility and safety of facilities and appropriateness of furniture and equipment; and provide for meeting special language needs of children with handicaps.

(b) (1) The Head Start grantee or delegate agency must treat children with handicaps like other children, to the extent that their special needs allows, and include children with handicaps in the full range of activities and services normally provided to all Head Start children.

(2) The grantee or delegate agency must arrange for or provide special education and related services necessary to assist in remedying the children's handicaps and to facilitate their participation in the regular Head Start program.

(3) The Head Start agency must arrange for, provide, or procure services which may include, but are not limited to: special education; counseling of children and parents; therapeutic recreation services; and therapy such as speech, language, physical, occupational and psychological. Ideally these services would be provided by staff with special training. The provision of special services must be under the overall supervision of a professional with appropriate experience and training.

(c) The Head Start grantee or delegate agency must explore options to meet the needs of handicapped children enrolled or to be enrolled and include these options in the handicap services plan. These may include:

(1) Joint placement of children with other agencies;

(2) Shared provision of services with other agencies;

(3) Training for Head Start staff in specific procedures;

(4) Need for increased staff; and

(5) Use of volunteers.

(d) The Head Start grantee or delegate agency must use the plan for services for handicapped children as a working document which guides all aspects of the agency's effort to serve handicapped children.

(e) The handicap services coordinator must work with the program director in planning and implementing the program account (PA) 26 budget, the budget for special services for handicapped children.

(f) The budget must reflect the objectives and activities in the handicap services plan. A Head Start grantee or delegate agency may use PA 26 funds only for special costs to serve handicapped children, above the costs to provide basic service for all the children as follows:

(1) *Salaries.* These costs include salaries of additional full or part-time Head Start staff, including the coordinator of handicap services, special educators and others qualified and trained in services to handicapped children, to assure that programs have the core capability to recruit, enroll, diagnose and provide or arrange for services to handicapped children. That portion of salary costs for other component staff which is spent to provide special services specifically included in the agency handicap services plan or in a child's IEP as required by section 1308.5 over and above the services provided to all Head Start children may be paid for from PA 26 funds.

(2) *Evaluation of children.* When there is a question after the regular Head Start screening and assessment as to whether a child may be handicapped, the Head Start grantee or delegate agency may use PA 26 funds to pay for further evaluation, even if the child is found not to be handicapped.

(3) *Services.* When the services are not available as donations, PA 26 funds may be used to pay for these services including special education; other special services; and therapy, including counseling and involvement of parents of children with handicaps. Dental care for certain severe conditions may also be paid for from PA 26 funds, as can summer services necessary to prevent regression.

(4) *Making services accessible.* These costs include elimination of architectural barriers which affect the participation of handicapped children.

PA 26 funds may not be used for extensive remodeling or for modifications of facilities primarily to upgrade the quality of space in the basic program for all children, even though this may be of indirect benefit to handicapped children in the center.

(5) *Transportation.* When the agency handicap services plan or an individual education program for a specific child includes special services, transportation for the children and their parents to the site of special services and to the regular educational site may be paid for from PA 26 funds. When necessary, the Head Start grantee or delegate agency must arrange for additional adults to serve as attendants and supervisors.

(6) *Special equipment and materials.* Purchase or lease or special equipment and materials for use in the program or home is allowable from PA 26 funds.

(7) *Training and technical assistance.* Increasing the abilities of staff to meet the special needs of handicapped children is an allowable expense. However, since resources may be available from other sources, it is not expected that extensive use will be made of PA 26 funds for staff training. Appropriate expenditures may include but are not limited to:

(i) Travel and per diem expenses for Head Start staff and parents to attend handicap training and technical assistance events;

(ii) The provision of substitutes to free staff to attend handicap training and technical assistance events;

(iii) Fees for courses specifically related to requirements of the handicap services plan or a child's individual education plan; and

(iv) Fees and expenses for a training/technical assistance consultant if such help is not available from another provider at no cost.

§ 1308.5 Developing individual education programs.

(a) Head Start programs must provide procedures for the ongoing observation, recording and evaluation of each handicapped child's growth and development for the purpose of planning appropriate activities to meet the child's special needs caused by the handicap(s) and assuring that they are carried out. Therefore, programs must develop an individual education program (IEP) for each handicapped child.

(b) The IEP must take into account the child's unique needs, developmental potential and family circumstances as well as the handicap(s).

(c) The IEP must include:

(1) A statement of the child's present level of functioning in the social-emotional, motor, communication and cognitive areas of development, and the identification of needs in those areas requiring specific programming;

(2) A statement of annual goals, including short term objectives for meeting these goals;

(3) A statement of needed services to be provided by each Head Start component that are in addition to those services provided for all Head Start children;

(4) A statement of the specific special education services to be provided to the child and those related services necessary for the child to participate in a mainstream Head Start program. This includes services provided by Head Start and services provided by other agencies and non-Head Start professionals;

(5) The identification of personnel responsible for the planning and supervising of services and for the delivery of services;

(6) The projected dates for initiation of services and the anticipated duration of services; and

(7) A statement of objective criteria and evaluation procedures for determining at least annually whether the short term objectives are being achieved or need to be revised.

(d) The IEP must be developed by a team which includes:

(1) The Head Start handicap services coordinator or designee;

(2) The child's teacher or home visitor;

(3) One or both of the child's parents or guardians; and

(4) The professional diagnostician(s) who evaluated the child, or someone knowledgeable about the evaluation.

(e) The team may include, in addition:

(1) A local education agency representative;

(2) Other individuals if invited by the parents; and

(3) Other individuals at the discretion of the Head Start program, including those component staff particularly involved due to the nature of the child's handicapping condition.

(f) Programs must make vigorous efforts to involve parents in the IEP process. The Head Start program must notify the parents in writing of the purpose and date of the IEP meeting. The meeting must be scheduled at a time and place mutually agreeable to the parents and the program. If the parents cannot attend the IEP meeting, despite repeated attempts to set up a mutually agreeable meeting, the progra must arrange an opportunity to meet with the parents to review the content of the meeting and secure their input and signature.

(g) Programs must develop and initiate the implementation of the IEP within 30 calendar days of the completion of the diagnosis. If a child enters Head Start with a professional diagnosis completed within two months prior to entry, services must begin the first week of program attendance.

Subpart C—Health Services Performance Standards

§ 1308.6 Evaluation of children.

(a) Screening is the first step in a three-part evaluation process consisting of screening, on-going developmental assessment, and diagnosis.

(b) The health coordinator is responsible for the health screening of all Head Start children within 45 calendar days of their enrollment. The handicap services coordinator must cooperate with the health coordinator and staff implementing developmental screening and health screening.

(c) Staff must inform parents of the types and purposes of this screening well in advance of the screening, the results, and subsequent evaluations. They must obtain written permission from the parents for the screening.

(d) The handicap services coordinator must cooperate with the education coordinator in the systematic evaluation of each Head Start child's functioning in all developmental areas. Developmental assessment is the formal and informal collection of information on each child's functioning in these areas: gross and fine motor skills, perceptual discrimination, cognition, self-help, social and receptive skills and expressive language. The handicap services coordinator must include the developmental information in later diagnostic and program planning activities for children with handicaps.

(e) The handicap services coordinator must arrange for further evaluation of a child who has been identified as possibly handicapped by screening, assessment or referral. A team of professionals representing more than one discipline must evaluate the child, except in unusual circumstances which must be discussed with the Regional Office. Diagnostic procedures must begin within 15 days of identification or screening.

(f) A professional member of the diagnostic team who is not a Head Start employee must certify the child as handicapped and specify the appropriate diagnostic classification. The certifying professional may not be the person who will be providing special services to the child unless no one else is available and the majority of the other professional member of the diagnostic team concur.

(g) Head Start grantees and delegate agencies must have diagnosticians recommend which of the Head Start diagnostic categories in §§ 1308.7 through 1308.14 should be used to classify each child they diagnose as handicapped.

(h) The diagnostic criteria described in §§ 1308.7 through 1308.13 are to be used only for impairments which limit learning, social, emotional or motor development and require special education or related services.

§ 1308.7 Diagnostic criteria: Health impairment.

(a) A child must be classified as health impaired who has limited strength, vitality or alertness due to a chronic health problem.

(b) The health impairment classification may include, but is not limited to, cancer; some neurological disorders; nutrition disorders (including obesity at or above the 95th percentile and malnutrition disorders below the 5th percentile of the growth curve); blood disorders, including hemophilia, sickle cell anemia, etc.; cystic fibrosis; and congenital heart disease or strokes. For purposes of the handicap services plan and the Program Information Report, each child should be recorded in the category which covers the functions most affected by the handicap for that child.

(c) The health impairment classification may also include severe dental problems when the condition of the teeth and supporting structures is such that routine eating is restricted or impossible; chronic pain is evident; growth and development are delayed or retarded; speech is impacted; and the child cannot perform daily activities and needs special schedules and services. The IEP for a child with a severe dental handicap must specify the modified education program and other services and project a date for estimated termination of the designation as handicapped.

(d) Examples of specific severe dental conditions are:

(1) Baby nursing bottle caries (four or more affected teeth); or

(2) Generalized rampant caries (four or more teeth require pulp therapy restoration or extraction); or

(3) Two or more fractured teeth; or

(4) Extra teeth requiring surgical extraction.

(e) Head Start grantees and delegate agencies must not classify a child whose condition is controlled by medication or who has been seizure free for one year or more as health impaired unless the child requires special education and related services. When the only services required are monitoring and providing medication, the child does not qualify as handicapped.

(f) A program must not classify a short-term medical problem, such as post-operative recovery, as a health impairment.

§ 1308.8 Diagnostic criteria: Behavior disorders.

(a) A child must be classified as having a behavior disorder who exhibits one or more of the following characteristics with such frequency, intensity, or duration as to require intervention:

(1) An inability to build or maintain satisfactory (age appropriate) interpersonal relationships with peers or adults (e.g., avoids playing with peers); or

(2) Inappropriate behavior (e.g., dangerously aggressive towards others, self-destructive, severely withdrawn, non-communicative); or

(3) A general pervasive mood of unhappiness or depression, or evidence of excessive anxiety or fears (e.g., frequent crying episodes, constant need for reassurance); or

(4) Chronic physical symptoms which may be associated with personal, family or school situations (e.g., vomiting, stomach aches).

(b) For Head Start reporting purposes, a child diagnosed as autistic must be classified in the Behavior Disorder Category.

(c) In addition to a psychological evaluation, the diagnostic process must include a complete physical examination to eliminate the possibility of misdiagnosis due to an underlying condition (e.g., hearing impairment, petit-mal seizures).

§ 1308.9 Diagnostic criteria: Communication impairment.

A child must be classified as having a communication impairment who has a speech disorder or a language disorder with a delay of one year or more in speaking his/her primary language.

§ 1308.10 Diagnostic criteria: Mental retardation.

(a) A child must be classified as mentally retarded who exhibits significantly sub-average intellectual functioning (2 standard deviations below the mean as measured by standardized intelligence tests), and exhibits deficits in adaptive behavior. Adaptive behavior refers to age-appropriate coping with the demands of the environment through independent skills in self-care, communication and play.

(b) Measurement of adaptive behavior must reflect objective documentation through the use of an established scale and appropriate behavioral/anecdotal records.

§ 1308.11 Diagnostic criteria: Hearing impairment.

A child must be classified as having a hearing impairment if one of the following conditions exists:

(a) Hearing loss in any of the degrees listed below (in one or both ears at one or more of the following frequencies—500 Hz, 1000 Hz, 2000 Hz and 4000 Hz):

(1) Mild hearing loss—20–40 dB HL;

(2) Moderate hearing loss—41–55 dB HL;

(3) Moderately severe hearing loss—56–70 dB HL;

(4) Severe hearing loss—71–90 dB HL;

(5) Profound hearing loss—91 or greater dB HL; or

(b) Hearing impairment (deaf or hard of hearing) that meets the legal definition for such an impairment in the State of residence; or

(c) Recurrent temporary or fluctuating hearing loss caused by Otitis Media, allergies, and/or eardrum perforations. Problems associated with temporary or fluctuating hearing loss include: Impaired listening skills; delayed language development; and articulation problems which develop as the child is learning to talk.

§ 1308.12 Diagnostic criteria: Orthopedic impairment.

(a) A child must be classified as having an orthopedic impairment if the condition involves muscles, bones, or joints and is characterized by impaired ability to maneuver in the classroom or home environment; impaired ability to perform fine or gross motor activities; or impaired ability to perform self-help skills.

(b) An orthopedic impairment includes, but is not limited to, spina bifida, cerebral palsy, loss of or deformed limbs, contractures caused by burns, arthritis, or muscular dystrophy.

1308.13 Diagnostic criteria: Blindness and visual impairment.

(a) A child must be classified as blind when one of the following exists:

(1) The child is sightless or has such limited vision that she/he must rely on hearing and touch as her/his chief means of learning; or

(2) The vision loss meets the definition of legal blindness in the State of residence; or

(3) Central acuity does not exceed 20/200 in the better eye with corrective lenses, or visual acuity is greater than 20/200, but is accompanied by a limitation in the field of vision such that the widest diameter of the visual field

subtends an angle no greater than 20 degrees.

(b) A child must be classified as having a visual impairment if central acuity with corrective lenses is between 20/70 in either eye, or if visual acuity is greater than 20/70, but is accompanied by other loss of visual function that restricts the learning process, e.g., faulty muscular action, limited field of vision, cataracts.

§ 1308.14 Diagnostic criteria: Other impairments.

(a) When none of the diagnostic criteria in §§ 1308.7 through 1308.13 are applicable and the State diagnostic criteria for preschool children includes a category which is appropriate for a Head Start child, that category must be used.

(b) For Head Start reporting purposes, children receiving services under the State eligibility category must be reported as children with other impairments.

(c) The State eligibility category used and a description of the handicapping condition must be included in the children's records.

§ 1308.15 Handicap/health services coordination.

(a) The handicap services coordinator must work closely with the health coordinator in the evaluation process and follow up to assure that the special needs of each handicapped child are met.

(b) The handicap services coordinator also must work closely with the staff person responsible for the mental health component. The handicap services coordinator may be able to help teachers identify children who show signs of problems such as possible serious depression, withdrawal, anxiety or abuse.

(c) Each Head Start director or designee must supervise the administration of all medications including prescription and over the counter drugs in accordance with State requirements.

(d) The health coordinator under the supervision of the Head Start director or designee must:

(1) Before any medication is administered, obtain parental consent;

(2) Maintain an individual record of all medications dispensed and review the record regularly with the child's parents;

(3) Record changes in a child's behavior with implications for drug dosage or type and report this to the child's parents, physician(s) the handicap services coordinator, and the education coordinator; and

(4) Provide that all medications, including those required by staff and volunteers, are adequately labeled, stored under lock and key and out of reach of children, and refrigerated, if necessary.

Subpart D—Nutrition Performance Standards

§ 1308.16 Nutrition services.

(a) The handicap services coordinator must work with staff to see that special needs are incorporated into the nutrition program.

(b) Physical therapists must be consulted on ways to assist severely handicapped children with problems of chewing, swallowing and feeding themselves.

(c) The handicap services plan must include activities to help handicapped children participate in meal and snack times with classmates.

(d) The handicap services plan must address prevention of handicaps with a nutrition basis.

Subpart E—Social Services Performance Standards

§ 1308.17 Recruitment and enrollment of handicapped children.

(a) The handicap services coordinator must cooperate with the social services coordinator, who has primary responsibility for outreach and recruitment to locate children in need of Head Start services, so that handicapped children are included in those efforts. The community needs assessment must include the needs of handicapped children and their parents.

(b) The handicap services coordinator must make every effort to ensure that no child for whom Head Start is an appropriate placement is unserved because of a handicap or its severity.

(c) The handicap services coordinator must access resources and plan for placement options and training so that a handicapped child is not denied enrollment because of:

(1) Staff attitudes and/or apprehensions;

(2) Inaccessibility of facilities;

(3) Lack of resources to serve a specific child;

(4) Unfamiliarity with a handicapping condition or special equipment, such as a prosthesis; and

(5) Need for personalized special services, such as feeding; suctioning; and assistance with toileting, including catheterization, diapering, and toilet training.

(d) The same policies governing Head Start program eligibility for non-handicapped children apply to children with handicapping conditions. Staff also must take the following factors into account:

(1) The number of handicapped children in the target population including types of handicaps and their severity; and

(2) The services and resources provided by other community agencies.

(e) The recruitment effort of a Head Start program must include recruiting children who are severely handicapped, including already diagnosed children.

Subpart F—Parent Involvement Performance Standards

§ 1308.18 Parent participation and transition of children from Head Start to public school.

(a) In addition to the many references to working with parents throughout these standards, the handicap services coordinator must carry out the following tasks:

(1) Provide information to parents on how to foster their handicapped child's development and learning.

(2) Provide opportunities for parents to observe large group, small group and individual activities described in their child's IEP.

(3) Provide follow-up assistance and activities to reinforce program activities at home.

(4) Refer parents to groups of parents of children with similar handicaps who can provide helpful peer support.

(5) Identify needs (caused by the handicap) of siblings and other family members.

(6) Provide information in order to prevent handicaps among younger siblings.

(7) Build parent confidence and knowledge in accessing resources and advocating to meet the special needs of their children.

(b) The handicap services coordinator must plan to assist parents in the transition of children to public school or other placement.

(c) Head Start programs, in cooperation with the child's parents, must notify the school of the child's planned enrollment prior to the date of enrollment. The Head Start program must initiate and carry out this transition.

Appendix to Part 1308—Head Start Performance Standards on Program Services for Children with Handicaps

This appendix sets forth guidance for the implementation of the requirements in Part 1308. This guidance provides explanatory material and includes recommendations and suggestions for meeting the requirements. However, this guidance is not binding on Head Start grantees or delegate agencies. In

instances where a permissable course of action is provided, the grantee or delegate agency may rely upon this guidance or may take another course of action that meets the applicable requirement. This programmatic guidance is included as an aid to grantees because of the complexity of providing special services to meet the needs of children with various handicaps.

Section 1308.4—Handicap services plan

Guidance for paragraph (a)

In order to organize activities and resources to help children with handicaps overcome or lessen their disabilities and develop their potential, it is important to involve the education, health, social services, parent involvement, mental health and nutrition components. ACYF recommends that parents, staff and policy group members discuss various strategies for assuring that the handicapped service plan integrates needs and activities which cut across the Head Start component areas before the plan is completed.

Programs should ensure that practices they use to provide special services do not result in undue attention to a child with a handicap. For example, providing names and schedules of special services for handicapped children in the classroom is useful for staff or volunteers coming into that classroom, but posting them would publicize the handicapping condition of the individual children.

Staff should work for the handicapped children's greater independence by encouraging them to try new things and to meet appropriate goals by small steps. Programs should help handicapped children develop initiative by including them in opportunities to explore, to create, and to ask rather than to answer questions. The children need opportunities to use a wide variety of materials including science tools, art media and costumes in order to develop skills, imagination and originality. The program should include them on field trips, as their experience may have been limited, for example, by an orthopedic handicap.

Just as a program makes available pictures and books showing children and adults from representative cultural, ethnic and occupational groups it should provide pictures and books which show handicapped children and adults, including those in active roles.

Staff should plan to answer questions children and adults may have about handicaps. This promotes acceptance of a handicapped child for him or herself and leads to treating the child more normally. Effective curricula are available at low cost for helping children and adults understand handicaps and for improving attitudes and increasing knowledge about disabilities. Information on these and other materials can be obtained from Resource Access Projects (RAPs), which offer training and technical assistance to Head Start programs.

There are a number of useful guides for including handicapped children in regular group activities while providing successful experiences for children who differ widely in developmental levels and skills. Some of these describe activities around a unit theme with suggestions for activities suitable for children with different handicaps and skill levels. Staff need to help some children with handicaps move into developmentally appropriate play with other children.

If a deaf child who uses or needs sign language is enrolled, a parent, volunteer or aide who can sign should be provided to help the child benefit from the program. Sign language classes are widely available and many young non-handicapped children enjoy learning this kind of code.

In order to build the language and speech capabilities of many handicapped children who have communication problems, it has been found helpful to enlist aides, volunteers, cooks, bus drivers and parents, showing them *how* to provide extra repetition and model gradually more advanced language as children improve in their ability to understand and use language. Small group activities for children with similar language development needs should be provided regularly as well as large group language and listening games and individual help. Helping children with intellectual delays or emotional problems or those whose experience have been limited by orthopedic or other handicaps to express their own ideas and to communicate during play and throughout the daily activities is motivating and can contribute greatly to their progress.

For non-verbal children, communication boards and devices may be helpful. State Departments of Special Education or Developmental Disabilities, United Cerebral Palsy or Easter Seal centers or RAPs should be able to provide information on how communication boards could be borrowed, made or purchased.

The plan should include any renovation of space and facilities which may be necessary to ensure the safety of the children.

Section 504 of the Rehabilitation Act of 1973 requires that all Federally assisted programs, including Head Start, be accessible to persons with handicapping conditions, including staff, parents and children. This does not mean that every building or part of a building must be physically accessible, but the program services as a whole must be accessible. Structural changes to make the program services available are required if alternatives such as reassignment of classes or moving to different rooms are not possible.

Staff should ensure children with physical handicaps have chairs and other pieces of furniture of the correct size and type for their individual needs as they grow. Agencies such as United Cerebral Palsy can provide consultation on adapting or purchasing the appropriate furniture. The correct positioning of certain children is essential and requires expert advice. As the children grow, the furniture and equipment should be checked by an expert such as a physical therapist because the wrong fit can be harmful. Efforts should be made to use furniture sized and shaped to place children at the same level as their classmates whenever possible.

Guidance for paragraph (b)

The plan should specify:

—Overall goals of the handicapped effort.

—Specific objectives and activities of the handicapped effort.

—How and when specific activities will be carried out and goals attained.

—Who will be responsible for the conduct of each element of the plan.

—How individual activities will be evaluated.

The plan should address:

—Enrollment information, including members of children and type of handicaps, known and estimated.

—Identification and recruitment of children with handicaps.

—Screening.

—Diagnosis.

—Assessment.

—The process for developing individual education programs.

—The provision of program services and related services. It should be possible for a reader to visualize how and by whom services will be delivered. Coordination with other agencies should be described.

—Program accessibility.

—Record keeping and reporting.

—Confidentiality of information.

—Any special safety needs.

—Medications.

—Transportation.

—The process for identifying and meeting training and technical assistance needs.

—Transitioning of children to the next program.

Particular attention should be given to addressing ways to:

—Work with other agencies in serving children with handicaps.

—Involve parents throughout the handicapped effort.

—Increase the ability of staff to serve children with more severe handicaps and the number of severely handicapped children served.

Guidance for paragraph (c) (1)

Children may spend part of the program hours in Head Start for a mainstreaming experience and part in a specialized program such as Easter Seals or a local mental health center. The amount of time spent in either program should be flexible, according to the needs of the individual child. Even a few hours a week in a mainstreamed classroom may be beneficial to a severely handicapped child. Such children may share an enrollment slot. All services provided, including those provided by collaborating agencies, should be described in the handicap services plan. Staff of both programs should observe each other's work with the child who is enrolled and maintain good communication.

Guidance for paragrah (c) (2)

Individual services such as occupational, physical or speech therapy, staff training, transportation, services to families or counseling may be shared by Head Start and other agencies. For example, Head Start might provide the equipment and transportation while a developmental center might provide a facility and physical therapy for a Head Start child. Some public schools provide resource teachers.

Guidance for paragraph (c) (3)

The program should provide training for the regular teachers in how to modify large group, small group or individual activities to meet the needs of the children with handicaps. Specific training for staff should be provided when Head Start enrolls a child whose handicapping condition requires a special skill or knowledge of special techniques or equipment. Examples are structuring a language activity, intermittent nonsterile catheterization, changing collection bags, suctioning, or the operation of leg braces. Joint training with other agencies is recommended to stretch resources and exchange expertise.

Guidance for paragraph (c) (4)

Hiring additional staff may be necessary to meet the needs of children with severe handicaps. Hiring an aide may be necessary on a full-time, part-time, temporary or as needed basis to assist with increased demands of a child with a severe disability. However, aides should not be assigned the major responsibility for providing direct services. Aides and volunteers should be guided and supervised by the handicap services coordinator or someone with special training. It is desirable to have the services of a nurse, physical therapist or licensed practical nurse available for children with severe health or physical impairments.

Guidance for paragraph (c) (5)

Volunteers trained by professionals to work specifically with children with handicapping conditions can provide valuable individualized support. For example, a volunteer might be trained by a physical therapist to carry out specific recommendations for an individual child.

Guidance for paragraph (e)

An effective plan calls for careful use of PA 26 funds. Basic elements of the plan should be incorporated into the narrative portion of the PA 26 grant application for review by the awarding (regional) office. The handicap services coordinators needs to be familiar with the provisions of Part B of the Education of the Handicapped Act and the services which may be available for three through five year old children under this Act.

To assist in the development of the plan it may be helpful to establish an advisory committee for the handicapped effort or to expand the scope of the health advisory committee.

Guidance for paragraph (f) (1)

While the coordinator of handicap services need not necessarily be a professional in the area of services to the handicapped, this coordinator should have taken or be taking special training. She or he should possess a basic understanding of the scope of the Head Start effort and skills adequate to manage the agency handicap effort, including coordination with other program components and community agencies and work with parents. PA 26 funds should not be used for regular staff or simply to increase the staff-child ratio, even though there may be indirect benefits to handicapped children in the program.

Guidance for paragraph (f) (2)

Examples of evaluation costs which can be covered by PA 26 funds include professional diagnosis, adaptation of assessment, instruments, professional observation and professional consultation.

Guidance for paragraph (f) (3)

Many handicapped chldren enrolled in Head Start already receive services from other agencies and Head Start programs should encourage these agencies to continue to provide services. Programs should use other community agencies and resources to supplement services for handicapped children and their families. Grantees should collaborate with other public and private organizations serving children with handicaps in order to obtain needed resources and should consider sharing qualified supervisors and specialists.

Head Start funds are limited, and grantees are encouraged to seek funds from other sources and to use the program's existing resources carefully. By planning ahead grantees can pool resources to schedule periodic use of a diagnostic or consultant team and time share, reducing travel charges and assuring the availability of scarce expertise. Some public schools and other agencies have enabling legislation and funds to purchase education, health, and developmental services of the type Head Start can provide. Grantees can also help increase the amount of preschool funding available to their State under the Education of the Handicapped Act. The amount of the allocation to each State Education Agency and to the public schools is determined by the number of three through five year olds with an Individual Education Program in place by December 1 of each year. By reporting the number of such handicapped children Head Start can generate funds. RAPs can provide information on mandates to serve handicapped children in each State. They have information on agreements which have been developed between Head Start and State Education Agencies and between Head Start and local schools. Such agreements offer possibilities to share training, equipment and other resources, as well as to smooth the transition from Head Start to public or private school for children and their parents. They can be mutually beneficial and save resources. Some of these agreements specify cost sharing practices. The Education of the Handicapped Act Amendments of 1986 provide new impetus to full services for handicapped children by 1990 and underline the importance of joint planning and cooperation with local public schools and other agencies. When PA 26 funds are not adequate to cover special services for children with handicaps, Program Account 22 funds can be used for services for children with handicaps, such as children with severe dental problems affecting learning and development.

Guidance for paragraph (f)(5)

It may be helpful to explore the possibility of a cooperative agreement with the public school to provide transportation. However, when it is impossible to obtain donated services and lack of transportation prevents a handicapped child from participating in Head Start, PA 26 funds should be used to cover transportation costs before a delay occurs which will have a negative effect on the child's progress. The major emphasis is on providing the needed special help so the child can develop to the maximum during the brief time in Head Start.

Guidance for paragraph (f)(6)

Care should be taken not to purchase expensive items such as wheelchairs or audiometers if they can be provided through other resources, such as Crippled Children's Services. Cooperative arrangements can be made with public schools and other agencies to share equipment such as tympanometers. Generally, special equipment and materials, other than those in common use in programs for pre-school handicapped children, should be purchased only when required by an individual child's education plan.

Guidance for paragraph (f)(7)

Staff should have access to regular ongoing training events which keep them abreast of new materials, equipment and practices related to serving children with handicapping conditions and to preventing handicaps. On-going training and technical assistance in support of the handicapped effort should be planned to complement other training available to meet staff needs. Each Head Start program has the responsibility to identify or arrange the necessary support to carry out training for parents and staff.

It builds the core capability of the program to have speech, language and other therapy provided in the regular site whenever possible. This allows for the specialist to demonstrate to regular staff and plan for their follow through. It also reduces costs of transporting children to clinics and other settings. When university graduate students are used to provide special services, it is helpful to arrange for their supervisors to monitor their work. Programs arranging for such assistance are providing a valuable internship site and it is to the university's advantage to have their students become familiar with programs on site.

Best use of training funds has resulted when programs carry out a staff training needs assessment and relate current year training plans to previous staff training with the goal of building core capability. Staff who receive special training should share new knowledge with the rest of the staff.

Many agencies offer free training for staff and parents. An example is the Epilepsy Foundation of America with trained volunteers throughout the country. Head Start and the American Optometric Association have signed a memorandum of understanding by which member optometrists offer eye health education and screening. State-funded adult education and training programs or community college child development and parenting classes can be used at low or no cost. Programs should consider the need for training in working with parents, in developing working collaborative relationships and in networking when planning training.

The handicap services coordinator needs to work closely with the education and health coordinators to provide or arrange training

for staff and parents early in each program year on prevention of handicaps. This should include the importance of observing signs that some children may have mild or fluctuating hearing losses due to middle ear infections. Such losses are often undetected and can cause problems in learning speech and language. Many children with hearing losses benefit from amplification and auditory training in how to use their remaining hearing most efficiently. The handicap coordination should also work with the education coordinator to provide timely staff training on recognizing signs that some children may be at high risk for later learning problems, as well as emotional problems resulting from failure and frustration. This training should address ways to help children develop the skills necessary for later academic learning, such as following directions calling for more than one action, sequencing, sustaining attention, and making auditory and visual discriminations.

The Head Start legislation calls for training and technical assistance to be offered to all Head Start programs with respect to services for handicapped children without cost through Resource Access Projects (RAPs) which serve each area of the country. The RAP contracts require that they contact each program to determine needs. Although their staff are small and their budgets limited, they are experienced and committed to meeting as many needs as they can. They welcome your inquiries. A brochure with names and addresss of the RAPs is available from ACYF/HS, P.O. Box 1182, Washington, DC 20013.

Section 1308.5. Developing individual education programs

Guidance for paragraph (a)

Following screening, diagnosis and the determination that a child is handicapped (see section 1308.4), a plan to meet the child's individual needs for special education and related services is developed. In order to facilitate communication with other agencies who may cooperate in providing services and especially with public or private schools which the children will eventually enter, it is recommended that programs become familiar with the format of the IEP used by the local schools. The format of the IEP to be developed for children in Head Start can vary according to local option. It should be written to serve as the working document for use by teachers and others providing services for a child.

In those instances in which a child is receiving services from another agency and already has an IEP, or when a child will be placed jointly in Head Start and another agency, an IEP should be developed collaboratively and adapted so that it will be appropriate to the child's participation in Head Start.

It is recommended that the staff review the IEP of each diagnosed handicapped child more frequently than the minimum once a year to keep the objectives and activities current.

Programs should provide services in the least restrictive environment, the setting as near to the regular setting with non-handicapped children as is appropriate for each child, based on the IEP.

It is ideal if a child can be mainstreamed in the full program with modifications of some of the small group, large group or individual program activities to meet his special needs. However, this is not possible or realistic in some cases on a full-time basis. The IEP team needs to consider the assessment and diagnostic information, parental information and desires, and types of settings available to plan for the best situation for each child. Periodic reviews can change the degree to which a child can be mainstreamed during the program year.

If Head Start is not an appropriate placement to meet the child's needs, referral should be made to another agency.

The IEP and the Handicap Services Plan should reflect realistic use of PA 26 funds.

Helpful specific information based on experience in Head Start is provided in manuals on serving children with handicaps developed by the RAPs. They cover such aspects of developing and implementing the IEP as:

- Gathering data needed to develop the IEP;
- Preparing parents for the IEP conference;
- Writing IEPs useful to teachers and;
- Developing appropriate curriculum activities and home follow up activities.

Guidance for paragraph (f)

Programs are encouraged to offer parents assistance in noting how their child functions at home and in the neighborhood. Parents should be encouraged to contribute this valuable information to the staff for use in on-going planning. Care should be taken to put parents at ease and eliminate or explain specialized terminology. Comfortable settings, familiar meeting rooms and ample preparation can help lessen anxiety. The main purpose is to involve them actively, not just to obtain their signature.

It is important to involve the parents of children with handicapping conditions in activities related to their child's unique needs, including the procurement and coordination of specialized services and follow-through in the child's treatment plan. In many cases these children will require specialized services throughout life. Therefore, it is especially helpful for Head Start to assist their parents in developing strategies and techniques to become effective advocates for their children.

Some parents of handicapped children are also handicapped. Staff may need to adjust procedures for assisting handicapped parents to participate in their children's programs. Materials to assist in this effort are available from RAPs.

Guidance for paragraph (g)

Timely implementation is essential so that needed services are provided as early as possible during the brief time a child is in Head Start. For those children remaining in Head Start for more than one year, the IEP will be in effect at the beginning of the second year and services will begin immediately.

Section 1306.6 Evaluation of Children

Guidance for paragraph (a)

Early screening is essential because of the time required for the subsequent steps necessary before special services can begin. Many programs already complete screening within 45 days of the first day of program operation. Some participate in spring or summer screening programs in their areas before the fall opening. Programs are encouraged to schedule well in advance with clinics and to seek agreements with such providers as Early and Periodic Screening, Diagnosis, and Treatment (EPSDT) providers and the Indian Health Service to give priority to screening Head Start children.

Guidance for paragraph (b)

The handicap coordinator should assist the health coordinator to assure that screening requirements are selected or adapted with the specific Head Start population and goals of the screening process in mind. Instruments with age appropriate norms should be used. Any adaptation of existing instruments should be undertaken only with the consultation of an appropriate professional. Children should be screened in their native language. Universities, civic organizations or organizations to aid recent immigrants may be able to locate native speakers to assist.

It is strongly recommended that screening with impedance audiometry to determine middle ear function be used to complement pure tone audiometry. Frequent rescreening is needed for children with recurrent ear infections.

Programs should use Child Find, the preschool identification effort carried out by public schools, and identification efforts of other agencies to augment Head Start recruitment and screening. This encourages coordination not only in identification but also in other areas, such as training and transition of children. Some programs have found it strengthens the skills of their staff to have all members learn to do developmental screening. This can be a valuable in-service activity. State requirements for qualifications should be checked. Non-professional screeners should be trained. This approach saves funds for diagnosis and services. Programs should guard against contracting for expensive screening services.

Some programs have used students from schools of nursing, who must carry out screening work as part of their required experience.

Some pediatricians or other physicians include developmental screening in the regular physical examinations they provide under EPSDT.

RAPs can provide information on characteristics of screening instruments.

Guidance for paragraph (c)

Parents should be provided with assistance if necessary, so they can participate in the developmental assessment.

Programs should offer parents assistance in understanding the implications of developmental assessments as well as medical, dental or other conditions for their child's development and learning.

Guidance for paragraph (d)

Developmental assessment is an on-going process and information from observations in the Head Start center and at home should be recorded periodically and updated in each

developmental area in order to document progress and plan activities.

Handicap services coordinators need to be thoroughly familiar with the information on developmental assessment in the *Guide for Education Coordinators in Head Start* (March 1986, developed by Creative Associates, Inc. under contract from the Head Start Bureau). It discusses such informal activities as objective observation, time sampling and obtaining parent information and the use of formal assessment instruments.

Guidance for paragraph (e)

Whenever parents, Head Start staff or other agencies identify children as possible handicapped, Head Start programs must ensure that the initial identification is confirmed or denied by qualified professionals trained in assessing handicapping conditions.

Professionals in areas such as medicine, psychology, special education, speech pathology, physical therapy may each spend time evaluating a child and need to coordinate their activities so that the child's total functioning is being considered. It is good practice to include at least three professionals from different disciplines on a team. Some diagnostic resources already exist as teams with representation from the many professions. The Head Start program, however, must often take the responsibility for coordination of the professionals involved.

Guidance for paragraph (f)

Programs should select diagnosticians familiar with the specific Head Start population, taking into account the age of the children and their cultural and ethnic background as it relates to the overall diagnostic process and the use of specific tests.

Programs should explain that Head Start programs are funded to provide preschool developmental experiences for all eligible children, some of whom have additional special needs caused by a handicapping condition. The intent of the diagnostic procedures is to identify children who have handicapping conditions, so they can receive appropriate assistance. It is not the intent to provide services for children for whom basic Head Start programming is designed and who may show developmental delays which can be overcome by a comprehensive program meeting the Head Start Performance Standards.

It is important that the Head Start diagnostic criteria be explained to the diagnosticians and that they be informed as to how the results will be used. Programs should inform diagnosticians that Head Start requires a categorical diagnosis and needs information on how the child is functioning.

Programs should request specific intervention recommendations from the diagnosticians for use in developing the child's IEP and to ensure that parents, teachers and others can best work with the child. Some programs have obtained useful functional information by asking diagnosticians to complete a brief form describing the child's strengths and weaknesses and the effects of the handicap, along with suggestions for special equipment, treatment or services. The diagnosticians should be asked to write their findings in easily understood terms.

When a referral has been made to a diagnostician, Head Start should provide comprehensive information to the diagnostician. This information should include screening results, pertinent observations, as consented to in writing by the parents, and the results of any developmental screenings or assessments which have been completed. Parents and Head Start staff should be involved in conferences held by diagnostic team members. Professional diagnosticians employed as Head Start staff can participate in making professional diagnoses.

It is important that programs ensure that no individual child or family is labeled, mislabled, or stigmatized with reference to a handicapping condition. Head Start must exercise care to ensure that no child is identified as handicapped because of economic circumstances; ethnic or cultural factors; or developmental lags not caused by a handicap, bilingual or dialectical differences, or being non-English speaking.

The selection of the appropriate diagnostic category should include consideration of the way the handicap affects the child's ability to function, as well as the cause of the condition.

For example, one child diagnosed as having fetal alcohol syndrome and manifesting mental retardation as the most disabling condition would be reported in the mental retardation category, whereas another child reported as having fetal alcohol syndrome may be reported in the behavior disorders category if behavior difficulties are the major symptom.

Some children may have a recent diagnosis prior to enrolling in Head Start. In these cases, Head Start should contact the diagnostician for the categorical diagnosis and obtain a functional assessment, if one has not been done. Some already diagnosed children have severe handicaps and a serious need for services. Some of these children may already be receiving some special assistance in other agencies but lack developmental services with other children. Head Start programs may best meet their needs by serving them jointly, saving fund (which would have been used for diagnosis) for the needed services.

Section 1308.7 Diagnostic criteria: Health impairment

Guidance

Many health impairments manifest themselves in other handicapping conditions. Because of this, particular care should be taken when classifying a health impaired child.

Public Health Service regional office dental consultants (and area dental officers for Indian and Migrant programs) may be contracted to provide ongoing professional advice.

As AIDs is a health impairment, grantees will continue to enroll children with such impairments on an individual basis. Coordinators of services for children with handicaps and health coordinators need to be familiar with the Head Start Information Memorandum on Enrollment in Head Start Programs of Infants and Young Children with Human Immunodeficiency (HIV), AIDS Related Complex (ARC), or Acquired Immunodeficiency Syndrome (AIDS) dated June 22, 1988. This guidance includes material from the Centers for Disease Control which stresses the need for a team, including a physician, to make informed decisions on enrollment on an individual basis. This is in accord with the assessment and IEP procedures for all children with handicaps in Head Start. It provides guidance in the event that a child with a handicap might present a problem involving biting or bodily fluids. The guidance also discusses methods for control of all infectious diseases through stringent cleanliness standards and includes lists of Federal, State and national agencies and organizations that can provide additional information as more is learned.

Suggested Primary Members of An Evaluation Team for the Health Impaired:

Physician.
Pediatrician.
Other specialists related to specific disabilities.
Dentist.

Possible Related Services:

Family counseling.
Genetic counseling.
Maintenance of apparatus which assists in breathing, feeding or toileting.
Nutrition counseling.
Recreational therapy.
Supervision of physical activities
Transportation.

Section 1308.8 Diagnostic criteria: behavior disorders.

Guidance

Intervention is needed when these behaviors cause distress to the child, the child's peers, or to the child's caregivers, and when they interfere with the child's ability to function. Behavior patterns unique to particular cultures should not result in the classification of a child as having a behavior disorder.

Suggested Primary Members of an Evaluation Team for Behavior Disorders:

Psychologist, psychiatrist or other clinically trained and State-qualified mental health professionals.
Pediatrician.

Possible Related Services:

Behavior management.
Environmental adjustments.
Family counseling.
Psychotherapy.
Transportation.

Section 1308.9 Diagnostic criteria: communication impairment

A language disorder may be receptive or expressive. A language disorder may be characterized by difficulty in understanding and producing language, including word meanings (semantics), the components of words (morphology), the components of sentences (syntax), or the conventions of conversation (pragmatics).

A speech disorder occurs in the production of speech sounds (articulation), the loudness, pitch or quality of voice (voicing), or the rhythm of speech (fluency).

A child should not be classified as having a communications impairment whose speech or language differences may be attributed to:

(1) Cultural, ethnic, bilingual, or dialectical differences, or being non-English speaking; or

(2) Disorders of a temporary nature due to conditions such as a dental problem.

Suggested Primary Members of an Evaluation Team for Communication Impairment:

Speech Pathologist.
Language Pathologist.
Audiologist.
Otolaryngologist.
Psychologist.

Possible Related Services:

Environmental adjustments.
Family counseling.
Language therapy.
Speech therapy.
Transportation.

Section 1308.10 Diagnostic criteria: mental retardation

Guidance

Diagnostic instruments with age-appropriate norms should be used. These should be administered and interpreted by professionals sensitive to racial, ethnic and linguistic differences. The diagnosticians must be aware of sensory or perceptual impairments the child may have (e.g., a child who is visually impaired should *not* be tested with instruments that rely heavily on visual information as this could produce a depressed score from which erroneous diagnostic conclusions might be drawn).

A child with Down Syndrome, or other syndromes, should be included in this category when mental retardation is the primary handicapping condition.

Suggested Primary Members of an Evaluation Team for Mental Retardation:

Psychologist.
Pediatrician.

Possibile Related Services:

Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Occupational therapy.
Physical therapy.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.11 Diagnostic criteria: hearing impairment

Suggested Primary Members of an Evaluation Team for Hearing Impairment:

Audiologist.
Otolaryngologist.

Possible Related Services:

Auditory training.
Aural habilitation.
Environmental adjustments.
Family counseling.
Genetic counseling.
Language therapy.
Medical treatment.
Speech therapy.
Total communication.
Transportation.
Use of amplification.

Section 1308.12 Diagnostic criteria: orthopedic impairment

Suggested Primary Members of an Evaluation Team for Orthopedic Impairment:

Pediatrician.
Orthopedist.
Neurologist.
Occupational Therapist.
Physical Therapist.

Possible Related Services:

Environmental adjustments.
Family counseling.
Language therapy.
Medical treatment.
Occupational therapy.
Physical therapy.
Recreational therapy.
Speech therapy.
Transportation.
Nutrition counseling.

Section 1308.13 Diagnostic criteria: blindness and visual impairment

Guidance

Primary Members of an Evaluation Team for Visual Impairment:

Ophthalmologist.
Optometrist.

Possible Related Services:

Environmental adjustments.
Family counseling.
Occupational therapy.
Orientation and Mobility training.
Pre-Braille training.
Recreational therapy.
Sensory training.
Transportation.
Vision therapy.

Section 1308.14 Other impairments

Guidance

This category was included to ensure that any Head Start child with a handicap who meets the State eligibility criteria for services to preschool children with handicaps obtains needed special services either within Head Start or the State program.

Suggested Primary Members of An Evalution Team for Other Impairments Meeting State Eligibility Criteria for Services to Perschool Children with Handicaps:

Pediatrician.
Psychologist.
Other specialists with expertise in the apporopriate area(s).

Possible Related Services:

Special services based on the child's difficulties and needs which could include occupational therapy, physical therapy or speech or language therapy.
Family Counseling.
Environmental Adjustments.
Transportation.

Section 1308.15 Handicap/health services coordination

Guidance for paragraph (a)

It is important to maintain close communication concerning children with health impairments. Health and handicap services coordinators need to schedule frequent re-tests of children with recurrent middle ear infections and to see that they receive on-going medical treatment to prevent speech and language delay. They should see that audiometers are calibrated annually for accurate testing of hearing. Speech and hearing centers, the manufacturer, or public school education service districts should be able to perform this service. In addition, a daily check when an audiometer is in use and a check of the acoustics in the testing site are needed for accurate testing.

Approximately 17% of Down Syndrome children have a condition of the spine (atlanto-axial instability) and should not engage in somersaults, trampoline exercises, or other activities which could lead to spinal injury without first having a cervical spine x-ray.

Guidance for paragraph (b)

The handicap services coordinator needs to assure that best use is made of mental health consultants. When a child appears to have a problem which may be a handicap in the social/emotional area, teachers, aides and volunteers should keep anecdotal records of the child's activities, tantrums, language use, etc. These can provide valuable information to a mental health consultant, who should be paid primarily to make specific recommendations and assist the staff rather than to document the problem.

The mental health coordinator can cooperate in setting up group meetings for parents of handicapped children which provide needed support and a forum for talking over mutual concerns. Parents needing services from community mental health services may need direct assistance in accessing services, especially at first.

The handicap services coordinator needs to work closely with staff across components to help parents of non-handicapped children become more understanding and knowledgeable about handicaps and ways to lessen their effects. This can help reduce the isolation some families with handicapped children experience.

Guidance for paragraphs (c) and (d)

Arrangements should be made with the family and the physician to schedule the administration of medication during times when the child is most likely to be under parental supervision.

Special awareness of possible side effects is of particular importance when treatment for a special handicapping condition requires administration of potentially harmful drugs (e.g., anti-convulsants, amphetamines).

Section 1308.16 Nutrition services

Guidance for paragraph (a)

Vocabulary and concept building, counting, learning place settings and acceptable manners can be naturally developed at meal

or snack time and socialization enhanced. Handicapped children often need planned attention to these areas.

The staff person who is responsible for nutrition and the handicap services coordinator should work with the social services coordinator to help families access nutrition resources and services for children who are not able to learn or develop normally because of malnutrition.

The staff person who is responsible for nutrition and the handicap services coordinator should alter staff to watch for practices leading to baby bottle caries, severe tooth decay caused by putting a baby or toddler to bed with a nursing bottle containing milk, juce or sugar water. The serious dental and speech problems this causes are completely preventable.

In cases of severe allergies, staff should work closely with the child's physician.

Section 1308.17 Recruitment and enrollment of handicapped children

Guidance for paragraph (a)

In cooperation with other community groups and agencies serving handicapped children, Head Start programs should incorporate in their outreach and recruitment procedures efforts to identify and enroll children with handicapping conditions who meet eligibility requirements and whose parents desire the child's participation. Section 504 of the Rehabilitation Act of 1973 (20 U.S.C. 794) states that any program receiving Federal funds may not deny admission to a child solely on the basis of the nature or extent of a handicapping condition and shall take into account the needs of the child in determining the aid, benefits, or services to be provided.

The handicap services coordinator's responsibility includes providing current names of appropriate specialized agencies serving young children with disabilities and names of public school Child Find contact people to the social services coordinator. It also includes learning what resources other agencies have available and the eligibility criteria for support from State agencies, Supplemental Security Income (SSI), Migrant Health Centers, Developmental Disabilities, Bureau of Indian Affairs, third party payers such as insurance companies and other sources.

Head Start programs are encouraged to join or help develop community efforts for identification and referral of children and families. Examples of appropriate referral sources include: hospital child life programs, SSI disabled or handicapped children's programs, EPSDT providers, infant stimulation programs, Easter Seal and United Cerebral Palsy agencies, mental health agencies, University Affiliated Programs, the local education agency Child Find and the medical community.

Head Start programs are encouraged to increase the visability of the Head Start mainstreaming effort within the community by:

—Including community child service providers on policy council health and handicap advisory boards and in other relevant Head Start activities.

—Making presentations on Head Start mainstreaming experiences at local, State and regional meetings and conferences, such as the National Association for the Education of Young Children, Council for Exceptional Children, and Association for the Care of Children's Health.

—Participating in interagency planning activities for preschool infant and toddler programs such as those supported under the Education of the Handicapped Act Amendments of 1986, Pub. L. 99-457.

Guidance for paragraph (b)

Head Start programs should maintain records of outreach, recruitment, and service activities for handicapped children and their families.

Each program should develop a policy on what types of information must be included in a comprehensive file for each handicapped child. The policy should outline the locations) where a copy of each record will be sent. For example, while a comprehensive file will be maintained at the Head Start program's central office (where the handicap services coordinator and component coordinators may be based), a teacher must have access to a child's IEP and progress notes in order to plan effectively. Confidentiality must be maintained in a manner which allows for access to information by appropriate staff.

Programs should arrange to share information on numbers of handicapped children served with the local public schools for planning purposes.

Section 1308.18 Parent participation and transition of children from Head Start to public school

Guidance for paragraph (a)

The handicap services coordinator needs to help parents understand that their active participation is of great importance in helping their children overcome or lessen the effects of handicaps. The coordinator should work to increase the ability of parents to access resources independently. For example, after accompanying parents on difficult missions, such as applying for SSI payment eligibility, staff should phase out assistance and structure easier independent experiences.

The handicap services coordinator should help program staff deal realistically with parents of children who have unfamiliar handicaps by providing the needed information, training and contact with consultants or specialized agencies. The coordinator should ensure that staff carrying out family needs assessment or visits do not overlook possible handicaps among younger siblings who should be referred for early evaluation and preventive actions.

Guidance for paragraphs (b) and (c)

As most Head Start children will move into the public school system, handicap services coordinators need to work with the Head Start staff for early and ongoing activities designed to minimize discontinuity and stress for children and families as they move into a different system. As the ongoing advocates, parents will need to be informed and confident in communicating with school personnel and staff of social service and medical agencies. Handicap services coordinators need to ensure that the Head Start program:

—Provides information on services available from schools and sources of services parents will have to access on their own, such as dental treatment;

—Informs parents of the differences between the two systems in role, staffing patterns, schedules, and focus;

—Provides opportunities for mutual visits by staff to one another's facilities to help plan appropriate placement;

—Familiarizes parents and staff of the receiving programs' characteristics and expectations;

—Provides early and mutually planned transfer of records with parent consent at times convenient for both systems;

—Provides information on services available under the Education of the Handicapped Act and provisions for parent involvement and due process; and

—Provides opportunities for parents to confer with staff to express their ideas and needs so they have experience in participating in IEP and other conferences in an active, confident manner. Role playing has been found helpful.

It is strongly recommended that programs develop plans with local school systems for smooth transition. In order to be effective, such plans must be developed jointly. They are advantageous for the children, parents, Head Start and the public school. RAPs have gathered and developed materials useful for transition. Programs in isolated areas need to pay particular attention to transition. For example, American Indian programs whose children move into several systems, such as Bureau of Indian Affairs schools and public schools, need to prepare children and families in advance for the new situation. Plans should be used as working documents and reviewed for annual update, so that the foundation laid in Head Start is maintained and strengthened.

PART 1304—PROGRAM PERFORMANCE STANDARDS FOR OPERATION OF HEAD START PROGRAMS BY GRANTEES AND DELEGATE AGENCIES

2. The authority citation for Part 1304 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

3. In Part 1304, wherever the term "OCD" is used change to "ACYF" and wherever the term "Office of Child Development" is used change to "Administration for Children, Youth and Families."

4. Section 1304.1–2 is proposed to be amended by revising paragraphs (a), (c) and (i) to read as follows:

§ 1304.1–2 Definitions.

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(a) The term "ACYF" means the Administration for Children, Youth and Families, Office of Human Development Services, U.S. Department of Health and

Human Services, and includes appropriate regional office staff.

* * * * *

(c) The term "Commissioner" means the Commissioner of the Administration for Children, Youth and Families.

* * * * *

(i) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reason thereof require special education and related services.

5. Section 1304.3–3 is proposed to be amended by revising paragaph (b) introductory text to read as follows:

§ 1304.3–3 Medical and dental history, screening and examinations.

* * * * *

(b) Health screenings must be completed within 45 days after the child is enrolled or entered into the program and must include:

* * * * *

PART 1305—ELIGIBILITY REQUIREMENTS AND LIMITATIONS FOR ENROLLMENT IN HEAD START

6. The authority citation for Part 1305 is revised to read as follows:

Authority: 42 U.S.C. 9801 *et seq.*

7. Section 1305.2 is proposed to be amended by revising paragraph (b)(3) as follows:

§ 1305.2 Definitions.

* * * * *

(b) * * *

(3) The term "handicapped children" means mentally retarded, hard of hearing, deaf, speech or language impaired, visually handicapped, seriously emotionally disturbed, orthopedically impaired, or other health impaired children or children with specific learning disabilities who by reasons thereof require special education and related services.

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Part VI

Environmental Protection Agency

Regulation of Pesticides in Food: Addressing the Delaney Paradox Policy Statement; Notice

ENVIRONMENTAL PROTECTION AGENCY

[OPP-260052; -FRL-3388-3]

Regulation of Pesticides in Food: Addressing the Delaney Paradox Policy Statement

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice announces a change in the position EPA will take in rulemaking proceedings under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) concerning certain pesticides intended for use in food production. EPA's position will be that the section 409's so-called Delaney Clause—which, read literally, purports to bar absolutely the issuance of a food additive regulation for a food additive that has been found to induce cancer in test animals—is subject to a *de minimis* exception where the human dietary risk from residues of the pesticide is at most negligible. This change in position is intended to foster greater consistency in actions EPA will take with respect to the registrations of pesticides under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and tolerances for pesticide residues on food under sections 408 and 409 of the FFDCA. Elsewhere in this issue of the **Federal Register**, the Agency is proposing new procedural rules for establishing, modifying, and revoking section 409 food additive regulations, as well as procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under sections 408 and 409. This Notice also discusses how EPA plans to approach the issue of what risks might be considered "negligible." This Notice provides the Agency's response to the recommendations of the recent National Academy of Sciences report entitled "Regulating Pesticides in Food: The Delaney Paradox". Public comment is invited on this Notice.

ADDRESS: Comments should bear the document control number "OPP-260052", and be submitted in triplicate to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: William L. Jordan, Policy and Special Projects Office, Office of Pesticide Programs (TS-766C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location and telephone number: Room 1115, CM #2, 1921 Jefferson Davis Highway, Arlington, VA, (703-557-7102).

SUPPLEMENTARY INFORMATION:

I. Introduction

The Environmental Protection Agency is responsible for regulating the sale and use of pesticide products under the authority of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), (7 U.S.C. 136 *et seq*). FIFRA contains a standard for registration that allows EPA to take both the risks and the benefits of a pesticide's use into account.

The Agency also regulates pesticide residues on food under sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA) (21 U.S.C. 346a, and 348). Food is "adulterated" and subject to seizure under the FFDCA if it is found to bear pesticide residues that are not permitted by appropriate section 408 and 409 tolerances. Section 408 of the FFDCA, like the FIFRA, gives the Agency authority to balance risks and benefits in reaching regulatory decisions with respect to pesticide residues on raw agricultural commodities section 409 of the FFDCA governs the establishment of food additive regulations (often called 409 tolerances) in processed food and feed. EPA interprets section 409 to also allow EPA to consider benefits to food consumers in reaching its decisions unless the Delaney Clause applies. However, the Delaney Clause of section 409, if read literally, is a risk-only standard that bars the establishment of any food additive regulation that would authorize residues in or on processed food or feed of any pesticide that has been found to induce cancer when ingested by man or test animals, with certain limited exceptions.

The difference in the standards of these two statutes presents EPA with a major problem in regulating certain pesticide chemicals which have been found to induce cancer in test animals. Such pesticides may be ineligible for food additive regulations under the FFDCA even if they have been found to pose no unreasonable risk to humans and qualify for registration under FIFRA. This problem may arise in three situations: (1) When a food additive regulation is sought for a new pesticide chemical (or a new use of a currently registered chemical) that induces cancer in animals; (2) when new residue data indicate a need for a food additive regulation for a registered pesticide known to induce cancer in animals; or (3) when new toxicity data show that a registered pesticide for which food additive regulations have been established induces cancer in animals.

In the first situation, the issue is whether to allow the pesticide to enter the market or to be marketed initially for a particular food use. EPA's current regulations prohibit FIFRA registration until the issuance of any needed tolerances and food additive regulations associated with the pesticide's use. The second and third situations require EPA to decide whether to make unlawful the marketing of a pesticide for those previously-approved food uses subject to section 409. The number of uses in these latter two categories is increasing as EPA receives more and more toxicity and residue data. Of significant concern are the differences in the standards now applied to old and new pesticides. Under current Agency practice, as described more fully later in this Notice, a new pesticide that poses a relatively low risk of cancer may be barred from registration because of Delaney Clause constraints, while an old pesticide that poses a higher risk and that is used for the same purposes might remain on the market.

To address these issues, in February 1985 the Agency commissioned the Board on Agriculture of the National Research Council/National Academy of Sciences ("NAS") to examine the impact of the Delaney Clause on the tolerance-setting process and on EPA decision-making. The NAS committee formed to conduct this study included experts in agricultural pest control, pesticide development, agricultural economics, cancer risk assessment, public health, food science, regulatory decision making, and law.

The detailed report prepared by the NAS, entitled "Regulating Pesticides in Food: The Delaney Paradox," was issued on May 20, 1987. The report set forth four main recommendations:

1. Pesticide residues in food, whether marketed in raw or processed form or governed by old or new tolerances, should be regulated on the basis of consistent standards. Current law and regulations governing residues in raw and processed foods are inconsistent with this goal.

2. A negligible risk standard for carcinogens in food, applied consistently to all pesticides and to all forms of food, could dramatically reduce total dietary exposure to oncogenic pesticides with modest reduction of benefits.

3. EPA should focus its energies on reducing risk from the most worrisome pesticides on the most-consumed crops.

4. The EPA should develop improved tools and methods to more systematically estimate the overall

impact of prospective regulatory actions on health, the environment, and food production.

The Agency has evaluated the recommendations of the NAS, and as discussed later in this document, has reached conclusions about what would be an ideal policy, one that would be based on the NAS recommendations. In summary under this ideal policy, the Agency would apply a uniform set of criteria to all FIFRA registration decisions and all FFDCA section 408 tolerance and section 409 food additive regulation decisions. If a pesticide's use would pose no risk or only a negligible risk, the pesticide's use would be approved under both Acts without any particular scrutiny of benefits. This has for some time been EPA's practice with respect to decisions on pesticides that pose only non-cancer risks, and with respect to decisions under FIFRA and under FFDCA section 408 on pesticides that may pose cancer risks. (EPA has assumed that an applicant's willingness to expend the sums required to obtain registration of a pesticide, in the expectation of recovering those sums by sales of the pesticide, indicates that the pesticide's use will yield benefits that are greater than negligible.) Under the ideal policy, registrations and the associated tolerances and food additive regulations similarly would be granted for pesticides that pose at most a negligible risk of cancer to humans (and meet the other requirements of FIFRA and the FFDCA). For those pesticides deemed to pose a greater-than-negligible risk, a risk/benefit evaluation would determine the appropriateness of FIFRA registration and FFDCA clearances under sections 408 and 409. The greater the degree of risk, the greater the benefits that would have to be shown to justify approval, and the more intensive would be the benefits evaluation required to reach a regulatory decision.

Implementation of this ideal policy, however, is subject to the constraints imposed by the Delaney Clause. In the case of a use of a pesticide that requires a section 409 clearance and that poses a cancer risk that is greater than negligible, the Delaney Clause ordinarily bars approval of the use; the Agency is unaware of any legal theory that would justify a change in its current practice of refusing to issue new food additive regulations in such situations (with certain exceptions discussed in detail later in this Notice). However, for pesticides that pose at most a negligible risk of cancer and whose use requires section 409 clearances, EPA will change its current practice to the extent that, in the future, EPA will propose to issue food additive regulations on the basis of the *de minimis* doctrine, described in Unit II of this Notice.

The Agency wishes to make it clear that the interpretations and policy changes it is announcing today have no final effect with respect to any individual pesticide. This Notice relates primarily to the regulatory treatment of some pesticides under FFDCA section 409. Any food additive regulation that EPA may issue in reliance on the *de minimis* doctrine discussed in this Notice will be preceded by issuance of a proposed rule, and also will be referred to the FIFRA Scientific Advisory Panel. Section 409(b) and 409(h) allow "any person" to petition EPA to issue, modify, or revoke a section 409 food additive regulation, and section 409(c) says that EPA must act on such a petition. Under section 409(f), any "adversely affected person" (a term that has been given a very inclusive reading by the courts) may object to an EPA action taken either in response to a section 409(b) petition or at EPA's own initiative under section 409(d). EPA must rule on the objection; if factual matters are at issue, EPA first must hold a formal evidentiary hearing to produce a record upon which the ruling must be based. Although this Notice sets forth positions that the Agency expects to take initially in relevant proceedings arising under FFDCA section 409, EPA decisional officials will be open to all arguments presented in those proceedings and will base their final decisions on the merits of the arguments presented. See *McLouth Steel Products Corp. v. Thomas*, 838 F. 2d 1317 (D.C. Cir. 1988). Judicial review of rulings on individual objections under FFDCA section 409 is available only in the manner described by section 409(g). EPA will take the position that this Notice is not itself properly the subject of judicial review because it lacks the requisite finality.

A detailed discussion of the policy changes involved is set forth in Unit III. of this Notice.

II. Legal and Regulatory Background

EPA often must apply four different and sometimes conflicting statutory standards in deciding whether a particular pesticide may be used in food production: one under the FIFRA and three under the FFDCA.

A. The Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA)

The sale, distribution, and use of pesticides in the United States are governed directly by the FIFRA and are also influenced heavily by the FFDCA. FIFRA requires that all pesticides which are sold or distributed in the United States be registered in accordance with the statutory standard for registration set forth in FIFRA. That standard requires, among other thing, that the pesticide perform its intended function without causing "unreasonable adverse effects on the environment." (FIFRA section 3(c)(5)). The term "unreasonable adverse effects on the environment" is defined as "any unreasonable risk to man or the environment, taking into account the economic, social and environmental costs and benefits of the use of any pesticide," (FIFRA section 2(bb)). Under FIFRA section 6, EPA may cancel the registration of a use of a pesticide [1] (or require modifications in the terms and conditions of registration in lieu of cancellation) if the Agency determines that the risks of use of the pesticide outweigh the benefits of the use.

EPA regulations (40 CFR 162.7(d)(2)(iii)(E)) and 162.167(a)(4), redesignated as 40 CFR 152.112, 152.113, and 152.114, see 53 FR 15952, May 4, 1988) provide that a registration may not be granted if "the intended use of the pesticide results or may reasonably be expected to result, directly or indirectly, in residues of the pesticide becoming a component of food or feed," unless the necessary sections 408 and 409 clearances have been issued.

This requirement assures that a pesticide use will not be registered for a food crop unless the Agency has determined that the resulting pesticide residues in or on the crop will not exceed a safe level. Moreover, by examining the pesticide use under the statutory scheme as a whole and assuring that the criteria of both FIFRA and FFDCA are met, the Agency avoids the potential for residues that are illegal under the FFDCA appearing in or on foods as a result of pesticide use that is legal under FIFRA. It has been EPA's belief that pesticide users and food processors should be able to safely assume that a pesticide registered under FIFRA has the appropriate clearances under the FFDCA for the food uses listed on the FIFRA label.

B. Sections 408 and 409 of the Federal Food, Drug and Cosmetic Act (FFDCA)

Under FFDCA section 402, a raw agricultural commodity is adulterated if

[1] The decision to cancel a pesticide can result from a Special Review, an intensive review of the risks and benefits of a pesticide which meets or exceeds risk criteria set forth in 40 CFR Part 154. The Agency also can take action to cancel (and, if necessary, to suspend during the cancellation proceedings) the registration of a pesticide whose risks appear to exceed its benefits, without first going through the Special Review process.

it contains a pesticide residue not authorized by a FFDCA section 408 tolerance (maximum permissible level) or an exemption from the requirement of a tolerance. An adulterated commodity sold or distributed in interstate commerce is subject to seizure by the Food and Drug Administration (FDA).[2]

To establish a tolerance or exemption regulation under section 408, the Agency must find that the regulation would "protect the public health." (FFDCA section 408(b)). In reaching this determination, the Agency is directed to consider, among "other relevant factors," the necessity for the production of an adequate, wholesome, and economical food supply, and the other ways in which the consumer may be affected by the pesticide. Thus, in the Agency's view, section 408 of the FFDCA expressly gives the Agency the authority to balance risks against benefits in determining appropriate tolerance levels.

Under FFDCA section 402, food is adulterated (and hence subject to seizure) if it contains any food additive (including any pesticide residue) not authorized by a section 409 food additive regulation. An important exception to this provision is that a processed food containing pesticide residues resulting from the "carryover" from treatment at the raw agricultural commodity stage is not regarded as adulterated if the residue level in such a food is no greater than that allowed by the section 408 tolerance established for the raw agricultural commodity.

The establishement of a food additive regulation under section 409 requires a finding under the "general safety clause" in section 409(c)(3) that the use of the pesticide "will be safe." The only direct guidance given by the Act as to the meaning of the term "safe" is that the term "has reference to the health of man or animal," (FFDCA section 201(u)). Factors to be considered in making this "general safety clause" determination are (1) the probable consumption of the pesticide or its metabolites; (2) the cumulative effect of the pesticide in the diet of man or animals, taking into account any related substances in the diet; (3) appropriate safety factors to relate the animal data to the human risk evaluation; and (4) "other relevant factors." FFDCA Section 409(c)(5)).

Appendix A contains a discussion of the procedures followed by the Agency in evaluating safe residue levels for tolerances and food additive regulations.

The general safety clause in section 409(c)(3) has been construed by the Agency to allow the weighing of benefits and risks when issuing food additive regulations. The legislative history indicates that section 409 was intended to permit the use of food additives "which may benefit our people and our economy when the proposed usages of such additives are in amounts accepted * * * as safe," and that "the test which should determine whether or not a particular additive may be used in a specific percentage of relationship of the volume of the product to which it might be added should be that of reasonable certainty in the minds of competent scientists that the additive is not harmful to man or animal." (S. Rep. No. 2422, 85th Cong. 2d Sess., August 18, 1958, at 2–3). In EPA's view, the determination of whether use of a pesticidal food additive is "not harmful" or is "safe" should take into account the net effects of use of the additive on the food supply, including the benefit (or to put it another way the avoidance of harm) to an adequate, wholesome, and economical supply of food that may result from a pesticide's use as well as any harm to the food supply that may result from the pesticide's use. At least for residues of pesticide chemicals, EPA believes that this kind of benefit should be regarded as one of the "relevant factors" EPA may consider under FFDCA section 409(c)(5), even though it is not listed specifically there as it is in section 408(b). A risk/benefit reading of the general safety clause also was adopted by the one court that has addressed the issue.[3] FDA, however, has tended to interpret the section 409 general safety clause as a criterion that focuses solely on the risks to the food supply caused by the food additive, as opposed to the risks avoided, and this view has considerable support in the legislative history of section 409 and in scholarly journals.

C. The Delaney Clause

The one clear exception to the Agency's latitude to balance risks and benefits for food additives under section 409 is the "Delaney Clause" in section 409(c)(3). The Delaney Clause states that a food additive shall not be deemed safe "if it is found to induce cancer when ingested by man or animal or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal." Because FFDCA section 408 contains no counterpart to the Delaney Clause, the Agency has the authority to evaluate the risk posed by the presence of residues of a carcinogenic pesticide in a raw agricultural commodity, and to establish a section 408 tolerance at a level which will protect the public health, taking benefits to the food supply into account. As long as the processed food does not contain residues above the level allowed in the raw agricultural commodity, residues of that carcinogenic pesticide may legally be present in such processed food. However, where residues of the chemical concentrate above the section 408 tolerance level during processing, or result from use of a pesticide during or after processing, a food additive regulation might not be appropriate because of the Delaney Clause bar. The Delaney Clause contains an express exception (the "DES provisio") that allows a carcinogenic ingredient of animal feed to be found "safe" if such ingredient will not adversely affect the animal and if "no residue" of the substance will be found, by an Agency-approved method, in any edible food yielded or derived from the treated animal. FDA has concluded that the provision should be implemented by a "sensitivity-of-method" approach that allows a carcinogenic ingredient to be added to animal feed if "no residues" of that ingredient are detectable by an FDA-approved analytical method that is sensitive enough to detect any level of residue representing a lifetime excess human cancer risk of more than one in a million (44 FR 17070).[4] The FDA

[2] Under Reorganization Plan No. 3 of 1970, which established EPA, the authority to set tolerances for pesticide chemicals in raw agricultural commodities and processed food under FFDCA sections 408 and 409 respectively, was transferred from FDA to EPA. FDA enforces most of the pesticide tolerances and food additive regulations that EPA issues, along with the many non-pesticide food additive regulations that FDA issues. The U.S. Department of Agriculture enforces the tolerances and food additive regulations with respect to meat, poultry, and egg products.

[3] In *Continental Chemiste Corp.* v. *Ruckelshaus*, 461 F.2d 331, 340–341 (7th Cir. 1972), a case dealing with the relationship of FIFRA and FFDCA, the court stated that "[t]he test of safety [contained in the general safety clause of section 409] was intended to take into account the broader concepts of safety under the intended conditions of use; the benefits of the additive were to be evaluated rather than merely its potential for harm. In short, in making its ultimate determination whether new additives, or food containing them, may be marketed, [the FFDCA] employs the kind of substantive standard of product safety embodied in [the pre–1972] FIFRA's injury to man' concept, rather than a narrow consideration of the character of the additive itself." In discussing this "injury to man" concept, the court noted that "the substantive standards, phrased in terms of protection of the public and impact on living man, require consideration of the aggregate effect of a product's use upon the environment, including not only its potential for harm, but also the benefits which would be lost by removing it from the market." *Id.* at 336.

[4] FDA has analyzed the meaning of the DES proviso in proposed regulations published in the

Continued

approach incorporates a series of conservative assumptions for calculating the allowable residue levels in individual food items and in the total diet.

EPA has used the sensitivity-of-method approach in two actions establishing food additive regulations, one concerning thiodicarb and its possibly oncogenic metabolite acetamide on the animal feeds cottonseed hulls and soybean hulls (50 FR 27452, July 3, 1985; 50 FR 41341, October 10, 1985), and another concerning cyromazine and its possibly oncogenic metabolite melamine in or on poultry feed (49 FR 18120, April 27, 1984; 50 FR 20370, May 15, 1985).

If the chemcial induced cancer in animal studies in which the route of exposure was other than ingestion, the Delaney Clause by its own terms applies only if the tests in question "are appropriate for the evaluation of the safety of food additives." The Agency thus has discretion to decide whether a test showing cancer induction as a result of, e.g., dermal exposure to a chemical is "appropriate" for Delaney Clause purposes.

Two administratives doctrines, the "constituents policy" and the *de minimis* approach, also in EPA's view allow the establishment of food additive regulations in appropriate situations. The "consituents policy," developed by FDA, relies on the fact that the prohibitory language of the Delaney Clause pertains to any food additive, that has been shown to induce cancer in animals, but does not bar approval where an unwanted impurity (a "constituent") of the additive, tested by itself, is found to induce cancer. Thus, under the constituents policy, a food additive regulation may be established if the food additive as a whole does not cause cancer, even though the additive contains an undesired, nonfunctional constituent which is itself a carcinogen. In this situation, the impurity is judged under the general safety provisions of the applicable section of the FFDCA, using risk assessment as one of the decision-making tools. The Sixth Circuit Court of Appeals has upheld FDA's use of the constituents policy to interpret the color additives Delaney Clause provision in section 706(b)(5)(B) of the statute. (*Scott v. FDA*, 728 F. 2d 322 (6th Cir. 1984)). This provision contains a prohibition closely similar to that found in the section 409 Delaney Clause.

EPA has used the constituents policy in a rulemaking establishing a food additive regulation for dicamba in sugarcane molasses. Dicamba itself is not thought to be oncogenic; however, the pesticide formulation contains small amounts of a carcinogenic nitrosamine contaminant. EPA found the potential risk attributable to the presence of this contaminant to be very small, i.e., with an upper limit in the 10^{-9} range. Accordingly, the agency concluded that the requirements of section 409 were satisfied. (48 FR 11119, March 16, 1983; 48 FR 34024, July 27, 1983; 48 FR 50528, November 2, 1983).

In discussing its use of the "constituents policy" approach for dicamba, EPA noted that it does not regard deliberately added active or inert ingredients, or metabolites thereof, as potential candidates for clearance under the constituents policy. Rather, the Agency said it would only consider applying the rationale to unwanted impurities resulting from the manufacture of the pesticide (intermediates, residual reactants, products of side reactions, and chemical degradates). Furthermore, the Agency said that it would consider using this rationale in issuing a food additive regulation only where the potential risk from the impurity is extremely low, and that in estimating this risk, the Agency would rely on very conservative risk estimation methodology. (48 FR 34024, July 27, 1983).

Finally, the *de minimis* approach derives from case law holding that an administrative agency ordinarily has the inherent authority to avoid applying the terms of a statute literally when to do so would yield pointless results.[5] Two conditions are necessary to allow an agency to invoke the *de minimis* doctrine. First, the problem that would be addressed by regulation must be trivial in fact, such that no real benefit would result from regulation. Second, the legislative design must allow the Agency not to apply the statute literally in such a case.

In a recent case addressing the Delaney Clause contained in the color additive provisions of the FFDCA enacted in 1960 (*Public Citizen* v. *Young*, 831 F.2nd 1108 (D.C. Cir. 1987), cert. denied, 108 S.Ct. 1470), FDA argued that the establishment of a *de minimis* exception to the Delaney Clause is consistent with the legislative design, and that conservatively-assessed risks of one in a million (10^{-6}) or less should be regarded as trivial and thus subject to the exception. FDA relied on legislative history indicating that the Delaney Clause should be applied in a reasonable way. But the court rejected FDA's argument that the legislative history of the FFDCA color additive provisions does not preclude the use of the *de minimis* exception. The court held that "the Delaney Clause of the Color Additive Amendments does not contain an implicit *de minimis* exception for carcinogenic dyes with trivial risks to humans" because "Congress adopted an 'extraordinarily rigid' position, denying the FDA authority to list a dye once it found it to 'induce cancer in * * * animals'." (831 F.2nd at 1122). In the court's view, the proper mechanism for obtaining relief from the Delaney Clause with respect to color additives whose risk is trivial is to request that Congress make appropriate modifications to the statute. The food additive Delaney Clause in section 409, adopted in 1958, was not at issue in the case. Indeed, the court noted that the context of the section 409 provision was entirely different from that of the color additive Delaney Clause, and that "the operation of the food additive Delaney Clause raises complex issues distinct from those of this appeal" (id. at 1120, 1118 n. 13). The court suggested, moreover, that the legislative history of the section 409 Delaney Clause might lead to a different result (id. at 1120).

The Delaney Clause has long been regarded as allowing the administering agency to exercise scientific judgment and discretion in deciding whether a food additive "induces cancer" in animals.[6] EPA has generally assumed that, for purposes of the Delaney Clause, a substance "induces cancer" in animals if, in a well-conducted animal feeding study, a statistically significant increase in the incidence of histologically related tumors (benign, malignant, or combined)

Federal Register of March 20, 1979 (44 FR 17070), and February 11, 1983 (48 FR 6361). FDA's final rule establishing procedures implementing this sensitivity-of-method approach was published on December 31, 1987 (52 FR 49572).

[5] See *Alabama Power Co.* v. *Costle*, 636 F.2d 323, 360 (D.C. Cir. 1979); *District of Columbia* v. *Orleans*, 406 F.2d 957, 959 (D.C. Cir. 1968); *Environmental Defense Fund, Inc.* v. *EPA*, 636 F.2d 1287, 1284 n. 46 (D.C. Cir. 1980).

[6] See, e.g., the 1960 statement by Arthur S. Fleming, Secretary of Health, Education and Welfare, that the Delaney Clause "allows the Department and its scientific people full discretion and judgment in deciding whether a substance has been shown to produce cancer when added to the diet of test animals," cited with approval in the Report of the House Committee on Interstate and Foreign Commerce on the Color Additive Amendments of 1960 (H.R. Rep. No. 1761, 85th Cong. 2d Sess., June 7, 1960) at 14. See also the May 1960 report of the President's Science Advisory Committee, noting that "[t]he definition of a carcinogen implicit in the language of section 409(c) requires discretion in its interpretation because so may variables enter into a judgment as to whether a particular substance is or is not carcinogenic," cited with approval in the Senate floor debate on reconsideration of the Delaney Clause in the Color Additive Amendments of 1960. Congressional Record 15380 (July 1, 1960).

is observed in treated animals compared to concurrent control animals, unless there is a reason to conclude that the observed increase is unrelated to the ingestion of the test substance. Under this approach, a pesticide may be found to "induce cancer" in animals despite the fact that increased tumor incidence occurs only at high doses, or that only benign tumors occur, and despite negative results in other animal feeding studies. FDA has taken a similar approach in assessing data for the purposes of the Delaney Clause.[7]

There is at least "limited evidence" of carcinogenicity (virtually all from animal studies) for 66 or more of the approximately 350 food-use pesticides already approved for use, under the classification scheme set forth in EPA's "Guidelines for Carcinogen Risk Assessment," (51 FR 33992, September 24, 1986), described in Appendix A. EPA expects this number to become somewhat larger as it receives and evaluates more studies on the food-use pesticides.[8] A substantial portion of these pesticides require section 409 food additive regulations for one or more of their uses. Appendix B lists those pesticides which currently have been identified by the Agency as potential carcinogens and indicates which ones have, or have recently been determined to need, section 409 food additive regulations.

D. Current Policy Has Been Constrained by the Delaney Clause

From the foregoing discussion, it is apparent that if EPA determines that a pesticide poses a cancer risk that is greater than negligible and that outweighs the pesticide's benefits, the pesticide's FIFRA registration should be cancelled and its FFDCA sections 408 and 409 clearances should be revoked. There is no conflict between the various standards in such a case, and EPA's current practice reflects this lack of conflict.

Difficulties arise in the two remaining situations. A pesticide may pose only a negligible cancer risk, or it may pose a cancer risk that is greater than negligible but nonetheless is not so great as to outweigh the pesticide's benefits to the food supply. In both of the latter situations, EPA views FIFRA, FFDCA section 408, and FFDCA section 409's general safety clause as allowing the registration or continued registration of the pesticide and the issuance or continuation of needed FFDCA clearances. But the Delaney Clause of FFDCA section 409 arguably bars the issuance of new section 409 clearances for pesticides in either of the latter two situations, and thus concomitantly calls into question the status of such pesticides under FFDCA section 408 and FIFRA. Due to the constraints dictated by the literal approach to the Delaney Clause, the Agency has not been willing to register a carcinogenic pesticide for a new food use which requires a section 409 food additive regulation, even though that pesticide meets the risk/benefit standards in the other statutory provisions. And since there is often no practical way to assure that the raw agricultural commodity at issue will not be processed, the Agency generally does not grant a section 408 tolerance for residues of the pesticide on a raw agricultural commodity in a situation where an associated section 409 food additive regulation is needed but cannot be issued. As noted earlier, EPA's regulations currently provide that before a pesticide may be registered under FIFRA for a food or feed use, there must exist appropriate clearances under FFDCA sections 408 and 409 for the pesticide residues.

However, if the pesticide is to be used on a type of raw agricultural commodity which is not processed or if concentration of the raw-commodity residues does not occur during processing, and if the pesticides is not added during or after processing, no food additive regulation is needed. If the pesticide use passes the risk/benefit test under FIFRA and FFDCA section 408, a registration can be granted. This is true even if the estimated dietary cancer risk to the public is the same as or higher than the risk posed by an analogous pesticide use for which a food additive regulation is required. Thus, very similar risk situations have been treated quite differently because of the inconsistent statutory provisions. This approach has not necessarily resulted in lower health risks for the public. In fact, there is a strong argument that in some cases the constraints of the Delaney Clause paradoxically may have led to greater risks to the public. New pesticides that pose lower cancer risks than pesticides currently on the market have been denied registration while older, more hazardous pesticides remained in use.

The Agency's treatment of established food additive regulations for registered pesticide chemicals shown by new data to induce cancer in test animals has been quite different than the just-described treatment of requests for new food additive regulations. To date, the Agency has not taken action based on the Delaney Clause to revoke established food additive regulations. In many instances, taking such action would require EPA either to revoke the associated 408 tolerances and cancel the FIFRA registration (despite the risk/benefit criteria that would govern such actions), or to abandon its long-standing policy that the lawful application of a pesticide should not result in illegal pesticide residues. Many of these pesticides appear to pose low or negligible risks and to have substantial benefits for the production of food in this country.

The Agency has deferred action in such cases, while studying the dilemma posed by the statutory scheme. Section 409(h), which authorizes EPA to issue regulations establishing procedures for amending or repealing food additive regulations, does not expressly require repeal of food additive regulations when new data indicate that the pesticide induces cancer.[9] The Agency arguably has the latitude to assess the safety of established food additive regulations under any standard it chooses to adopt that is not arbitrary and capricious within the meaning of the Administrative Procedure Act; it arguably could adopt a standard based on the general safety clause of section 409(c)(3), or on a non-FFDCA standard, such as the FIFRA risk/benefit standard.

[7] See 52 FR 49572, 49577 (December 31, 1987) for a statement of FDA's current policy. See also 51 FR 28331, 28340 (August 7, 1986), where FDA specifically noted that "any chemical shown to induce cancer even in only one strain, gender, and species, at one dose in one experiment, is an animal carcinogen." The evidence as a whole may lead FDA to conclude that a substance that only causes benign tumors should be regulated as a carcinogen under the Delaney Clause. (52 FR 49577, December 31, 1987). However, a finding of only benign tumors does not of necessity lead FDA to conclude that the chemical "induces cancer" under the Delaney Clause.

[8] In recent years, the Agency has been conducting a systematic review of currently registered pesticides under the Registration Standards process. This review determines the sufficiency of the data base for these chemicals in light of current data requirements, and evaluates the current terms of registration to see if modifications are appropriate. During the development of a Standard, data gaps are identified and data call-in notices sent to registrants pursuant to FIFRA section 3(c)(2)(B), which gives the Agency authority to require the submission of data necessary to support existing registrations. The Agency evaluates the adequacy of existing tolerances and food additive regulations for chemicals registered for food uses during the Registration Standard review. Appendix C lists those food use pesticides for which Registration Standards have been developed or are scheduled for FY 1988.

[9] Section 409(h) states: "[The Administrator] shall by regulation prescribe the procedure by which regulations under (section 409) shall be amended or repealed, and such procedure shall conform to the procedure provided in this section for the promulgation of such regulation." The interpretation that revocation is not expressly required is based on giving the term "procedure" its normal meaning, rather than reading into the term the substantive criteria of section 409.

Thus, the Agency could conclude that a previously-approved use of a pesticide is "safe" or not "unreasonable," even though the potential risk is greater than "negligible," if the benefits of the use to the food supply outweigh its risks. On the other hand, if the Agency concluded that the presence of residues in the processed food or feed posed a risk that is "unreasonable" within the meaning of FIFRA or not "safe" within the meaning of the general safety clause of FFDCA section 409, considering the balance of risks and benefits, the Agency would be under an obligation to take action to repeal the regulation (or, in appropriate situations, to amend the regulation to allow a lower residue level determined to be "safe" or "reasonable") and to cancel or modify the terms and conditions of the related FIFRA registration as necessary to assure that the use of the pesticide did not cause unreasonable adverse effects on the environment. This approach would allow EPA to reconcile the FIFRA and FFDCA standards.

The contrary argument would rest on the assumption that Congress must have intended any reevaluation of an existing food additive regulation to be based on the section 409(c) criteria for establishing new regulations, and that the Delaney Clause is an integral part of section 409(c). This view of section 409 thus would incorporate section 409(c)—including the Delaney Clause—into section 409(h) of the statute. Under this reading, a food additive regulation would have to be revoked if new information should indicate that the Delaney Clause would have barred issuance of the regulation had that information been available originally.[10]

Such an approach might result in the cancellation of pesticide registrations for uses that meet the risk/benefit standard of FIFRA, FFDCA section 408, and FFDCA section 409's general safety clause, but that cannot conform to the risk-only, zero-risk standard of the Delaney Clause. Once the food additive regulation had been repealed, the presence of residues of that pesticide in the processed food in question would be illegal under the FFDCA, and the wisdom of allowing the pesticide to be sold under the FIFRA registration for use in producing that food would be questionable. To be consistent, many related section 408 tolerances also would have to be repealed under this approach, because such tolerances arguably would be inappropriate where residues could concentrate during processing to an unapproved level higher than the tolerance for the raw agricultural commodity. This approach, carried to its logical conclusion, might end many valuable uses of pesticide chemicals and might result in significant adverse consequences to food production, while resulting in little or no risk reduction. It should be noted that a registrant of a pesticide faced with a proposed FIFRA cancellation based entirely or primarily on the fact that the pesticide's residues are not thought to be "safe" within the meaning of FFDCA section 409 might assert that a FIFRA cancellation cannot be based on criteria imported from the FFDCA, and might succeed (see *Continental Chemists Corp.v. Ruckelshaus*, 461 F. 2d 331 (1972)). If the approach described in this paragraph were successful, however, there again would be no dichotomy in the treatment of old and new pesticides.

The system that has been used by EPA so far has the added undesirable feature of placing new pesticides that are barred from registration because of the strict reading of the Delaney Clause at a disadvantage relative to old products that are shown by new data to pose comparable or higher risks. Given the high costs of data development, there is little incentive to develop a new food use pesticide that shows carcinogenic potential—even if the risk it would pose would be minimal, and even if it could replace an old product that poses a higher risk—if initial registration is likely to be barred by Delaney Clause considerations. Thus, the development of new, lower-risk chemicals to replace old, higher-risk pesticides may have been retarded by the Agency's past implementation of the Delaney Clause.

A reassessment of the data in support of the tolerances for a particular pesticide chemical may present another serious concern. The data review by the Agency may reveal, with respect to a chemical that induces cancer in animal studies, that not all the necessary section 409 tolerances are in place. New residue data or a new review of old data may lead the Agency to determine that residues concentrate during processing and that section 409 food additive regulations have not been promulgated to cover this situation. If the Agency cannot promulgate such regulations because of the Delaney Clause ban, these processed commodities would contain illegal residues and would be subject to seizure by FDA. To prevent the presence of these residues in the processed commodities, the Agency would have to attempt to revoke the corresponding FIFRA registrations and FFDCA section 408 tolerances (unless appropriate use restrictions on the pesticide labeling could be developed to prevent the use of the pesticide on commodities destined for processing). Such action could profoundly limit the use of many beneficial pesticide chemicals.

The Agency is facing the issues discussed here with an ever-increasing number of old pesticide chemicals. (Appendix D discusses certain examples of pesticide chemicals currently or recently under review which give an overview of the practical dimensions of the problem.) EPA's decision on whether to attempt to apply the section 409(c) criteria retrospectively under section 409(h) may depend on whether its approach to negligible-risk situations, set forth in unit III of this document, is upheld.

E. Potential for Legislative Solution

The administrative approaches discussed so far in this document would solve only some of the problems the Agency faces in this area. Moreover, implementing those approaches will be controversial and might involve the Agency in protracted litigation that could cause uncertainty and make it difficult for businesses to make plans about pesticide development and pesticide use. A legislative solution, stating clearly that the Agency has the authority to grant food additive regulations for pesticide residues posing at most a negligible risk, clearly would be desirable. Additional legislative changes would be required to allow the Agency to fully reconcile FFDCA and FIFRA. Such legislation ideally would give the EPA the latitude to establish tolerances and food additive regulations for pesticides under a risk/benefit standard compatible with FIFRA, with a definitive statement that clearances for both raw and processed foods are to be established under a risk/benefit approach.

Hearings have been held recently in the House of Representatives on two bills that would address these issues. H.R. 4739, introduced by Congressman Waxman, would provide for the regulation of pesticide residues exclusively under comprehensively rewritten FFDCA section 408; H.R. 4937, introduced by Congressmen Brown and Roberts, would also provide for regulating pesticide residues under section 408, but would make only minor changes in the substance of that section.

[10] FDA appears to interpret the Delaney Clause as applying to food additives established prior to any indication of carcinogenic effect for such chemicals. See, for example, the discussion in the proposed FDA determination not to ban the use of methylene chloride in decaffeinated coffee (50 FR 51551, 51555 December 18, 1985).

III. Response to First and Second NAS Recommendations

A. Introduction

The Agency agrees completely with the NAS Report's most important conclusion—that a consistent approach ideally should be followed in the regulation of pesticides for food uses, regardless of whether the pesticides are new or old or whether the foods are raw or processed. As the NAS Report points out, there is no scientific reason to regulate pesticide residues in raw commodities differently from those in processed commodities. For risk assessment purposes, what is critical is not the type of food or feed commodity on which residues are present, but rather the identity and magnitude of the residues in the food and the associated consumption pattern. Likewise, EPA agrees with NAS that pesticides should be regulated consistently whether they are newly developed or have been on the market for many years.

Use of regulatory criteria that reflected those two NAS recommendations would allow the Agency to regulate high-risk pesticides more stringently than those that pose low risks, and permit the registration of new pesticides that offer substantial benefits and pose relatively insignificant risks. Riskier pesticides could then be replaced, and the total dietary risk reduced, with only minor adverse impacts on food production. This approach would be eminently sensible and desirable.

B. Policy for Achieving Greater Consistency in Evaluating Pesticides Under FIFRA and the FFDCA

The Agency believes that the most desirable way to achieve consistency in regulating potentially carcinogenic food-use pesticides would be to evaluate them under the same risk/benefit standard for both registration and tolerance purposes. However, if a section 409 regulation is required for a chemical to which the Delaney Clause applies, EPA believes that current law allows this approach to be used only to the extent that the *de minimis* doctrine allows Delaney Clause considerations to be dismissed. The following Table I outlines the regulatory outcomes that EPA would propose in response to various types of findings with respect to the cancer risk posed by new chemicals (or new uses of old chemicals). For clarity, Table I ignores non-cancer risks, and also ignores non-dietary cancer risks; in practice EPA would of course consider all risks.[11]

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[11] Discussions in this document of risks resulting from pesticide use are limited to cancer risks due to dietary exposure. It is important for the reader to keep in mind that the Agency's reviews and decisions encompass many other risks as well. Table I proceeds from the assumption that all other risk criteria have been satisfied.

TABLE I—REGULATORY OUTCOMES UNDER OLD AND NEW POLICIES

CANCER RISK LEVEL	NEED 409 CLEARANCE?	ACTION UNDER FFDCA (NEW POLICY)	ACTION UNDER FIFRA (NEW POLICY)	COMPARISON TO PRIOR POLICY
No risk	No	Issue 408 tolerance	Register	Same
	Yes	Issue 408, 409 tolerances	Register	Same
Negligible cancer risk	No	Issue 408 tolerance	Register	Same
	Yes	Issue 408 409 tolerance	Register	Changed: under old policy, EPA would have refused to issue 408 issue 409 or register
Greater-than-negligible cancer risk	No	Issue 408 tolerance if benefit outweighs risk	Register if benefit outweighs risk	Same
	Yes	Refuse to issue 409 because of Delaney; refuse to issue 408 because 409 barred	Refuse to register because of lack of needed FFDCA clearances	Same

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The following sections discuss how the new approach will affect pesticides in various regulatory categories.

1. Pesticides That Have no Carcinogenic Effect or That Pose Only a Negligible Risk of Carcinogenicity

For pesticides that are the subjects of applications for intitial registration or for registration for new uses, and that either do not induce cancer in test animals or pose only a negligible human cancer risk (generally a quantitative risk of 10^{-6} or less), EPA will propose to establish section 408 tolerances and section 409 food additive regulations, where necessary, and thereafter to approve the applications for registration. Very little scrutiny will be given to the benefits of such non-carcinogenic or negligible-risk pesticides. As it has in the past, the Agency will assume the presence of benefits that outweigh the negligible risk. A list of pesticides that are potential candidates for consideration under the negligible-risk approach is provided in Appendix E.

2. Pesticides That Pose a Caracinogenic Risk That Is Greater Than Negligible

Some pesticides may pose a risk of carcinogenicity that is greater than negligible. Generally, such pesticides will be those with quantified upper-bound risks greater than 10^{-6}. (Some pesticides with quantified upper-bound risks greater than 10^{-6} may, however, fall into the negligible risk category for qualitative reasons, as discussed in Unit III.B.3.) For pesticide uses not requiring FFDCA section 409 clearances, EPA will continue its current practice of granting FIFRA registrations and the associated FFDCA section 408 tolerances for pesticides whose carcinogenic risk is greater than negligible only if the benefits are determined to outweigh the risks based on a careful scrutiny of the projected benefits compared to other available means of pest control. Benefits evaluations will be performed for such pesticides; the higher the risk, the more thorough the benefits evaluation that will be necessary. The risks of the available alternative pesticides will also be taken into account to determine if the total risk picture could be reduced by allowing the pesticide on the market. This approach accords with past practice.

But for the Delaney Clause, the Agency would propose to apply the same approach to pesticides in this category that require section 409 regulations. However, the Agency is not aware of any legal theory that would allow use of this approach under section 409 as it is currently written.

3. Treatment of Group C Chemicals

As explained in the EPA Guidelines for Carcinogen Risk Assessment, (51 FR 33992, September 24, 1986), there is great variability from one chemical to another in the amount and persuasiveness of evidence tending to show whether or not a chemical may cause cancer in humans. The EPA Guidelines represent the Agency's scheme for categorizing chemicals in terms of the weight of the evidence relating to their potential for human carcinogenicity. In general, the approach of the Guidelines is (1) to place a chemical in one of the groups (A through E) on the basis of the strength of the qualitative evidence of carcinogenicity from human epidemiology studies and animal tests and (2) for those chemicals showing some evidence of carcinogenicity, to set forth separately a quantitative upper bound on the risk that would be posed to humans if the substance in fact were a human carcinogen (see Appendix A). This information is useful to Agency officials and the public, since it provides a way to compare the risks of chemicals and to determine how consistently chemicals are regulated under the several statutory programs administered by the Agency.

The chemicals that pose the greatest difficulty in determining the proper regulatory response generally are those that fall into Group C ("possible human carcinogens") under the Guidelines. A chemical is placed in Group C if there is some evidence of potential carcinogenicity from animal studies, but that evidence is so limited that the chemical cannot be assigned to a higher category.

The Guidelines state that is some cases the Agency will not calculate a quantitative risk ceiling for a Group C chemical. Although it is always possible to calculate a quantitative risk number, the Agency believes that in some cases such quantitative estimates may suggest that the chemical definitely poses a risk to humans, even though in fact the Agency is quite unsure whether the chemical poses human risk. Appendix F lists a number of Group C pesticides and states whether quantitation of risk was deemed appropriate for each.

The Delaney Clause, of course, makes no provision for the weighing of animal-test evidence in terms of its pertience to human risk. If a chemical is found to induce cancer when ingested by animals or in other appropriate tests, the chemical is deemed "unsafe" under section 409 (unless the *de minimis* doctrine or one of the other previously-discussed exceptions applies). This absolute criterion presents special difficulties with respect to Group C pesticides.

The Agency's treatment for Delaney Clause purposes of a pesticide that falls in Group C will very. For example, many chemicals fall into Group C merely because the evidence of carcinogenicity comes from only one study. When the evidence from that study clearly indicates a carcinogenic effect in the animal tested, the Agency ordinarily treats the chemical as falling within the "high" end of the C category range and quantifies the risk. A tolerance decision for such a chemical will be based on the quantitative risk number, and the Delaney Clause will be deemed to apply unless the quantitative upper bound risk level is so low that the chemical's risk may be ignored under the *de minimis* doctrine. Conversely, a pesticide may be classified in Group C because the data on whether the chemical is an animal carcinogen are limited or uncertain, e.g., if the data are equivocal, unreliable, or subject to significant doubt, or if only benign tumors occurred. If the Agency determines that the weight of the evidence does not support treating the chemical as an animal carcinogen, the Agency will not treat the chemical as falling within the Delaney Clause bar. The Agency will, of course, in any such determination, set forth the reasons for its judgment. For example, a pesticide may be classified as belonging in Group C because the pesticide is associated with an increase in tumors in only one sex of one species with a lack of a clear dose/response relationship. Assuming that mutagenic data are negative and that structure/activity analysis shows no association with known carcinogens, the Agency generally would consider such a pesticide to be at the "low" end of the Group C range. It is doubtful that the Agency would require a quantification of the carcinogenic risk, and in such a case, the Delaney Clause would not be deemed applicable.

A pesticide may also fall into Group C, not because of any doubt about whether the chemical induces cancer in certain animal tests, but because of uncertainties as to the relevance of the finding to human risk. Reasons for questioning the relevance of the animal data to human risk could include, among other things, know variations in response between the test species and humans, or mechanistic considerations, e.g., a showing that cancer was induced in animals only as a secondly effect of an organic change in the animals induced by very high doses of the chemical and a showing that this effect would not occur at the low levels of human exposure. If a convincing

explanation exists for why the chemical poses no risk of cancer for humans, despite the fact that it has been shown to be an animal carcinogen in a feeding study or other appropriate study and has a theoretical upper bound risk greater than 10^{-6} calculated using a no-threshold model, EPA would propose to treat the chemical as falling into the negligible risk or *de minimis* category for Delaney Clause purposes because of the qualitative reasons for discounting the animal test results as a predictor of human risk. Given the limited knowledge about interspecies response differences and mechanisms of action for cancer, EPA anticipates that very few pesticides would qualify for *de minimis* treatment on this qualitative basis in the near future.

A Group C carcinogen would be regarded as subject to the Delaney Clause if it did not fall into the quantitative or qualitative *de minimis* exception described in this Notice.

The following Table II summarizes the Agency's proposed treatment of Group C carcinogens:

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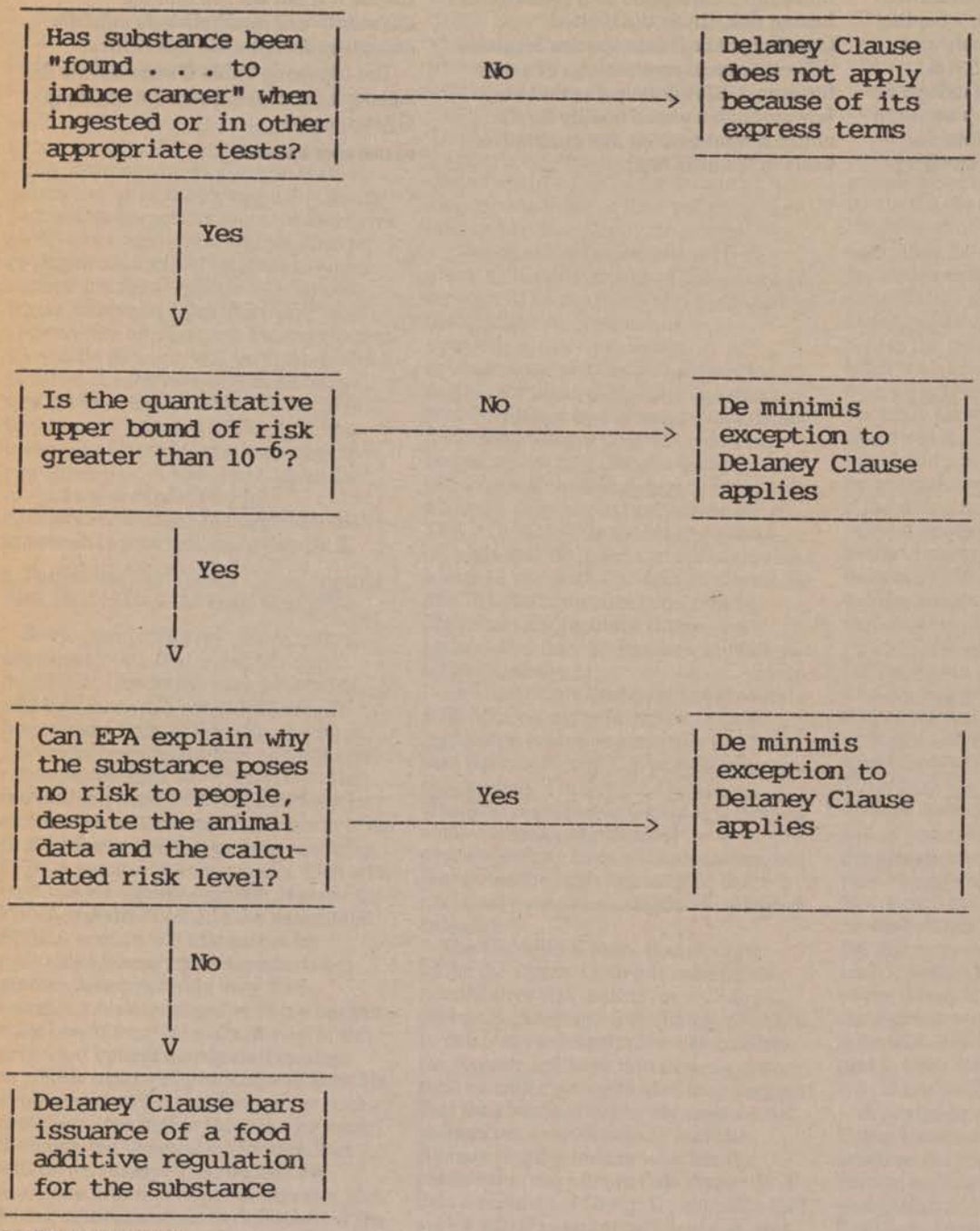
TABLE II—DECISION SCHEME FOR GROUP C CHEMICALS



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If the Agency determines that the Delaney Clause does not apply to a pesticide despite limited evidence of the pesticide's oncogenicity, the Agency will examine all toxicological effects of possible concern in determining the limit of acceptable dietary exposure. The Agency will then determine the no-observed-effect level (NOEL) for the most sensitive effect, which in turn will be used in setting the allowable daily intake (ADI) used in calculating the maximum permissible level of residues. (See Appendix A of this document.)

4. Currently Registered Pesticides

EPA's position with respect to currently registered pesticides that pose at most a negligible dietary risk of cancer will parallel that described earlier for proposed new food uses of pesticides, and the regulatory status of registered pesticides that pose such risks will not be changed as a result of this Notice. At the other end of the spectrum, EPA is not changing its policy of attempting to cancel FIFRA registrations and revoke FFDCA clearances for pesticides that pose risks of cancer (or other adverse effects) that outweigh their benefits. Finally, EPA has not determined how to proceed with respect to a pesticide that poses an upper-bound cancer risk that is greater than negligible but that is outweighed by the benefits of the pesticide.

5. Section 18 Exemptions

Section 18 of FIFRA allows EPA to exempt State and Federal agencies from the provisions of the Act if the Agency finds that emergency conditions exist that warrant the exemption. The changes in the Agency's approach to the issuance of food additive regulations already described in this document would result in conforming changes in the implementation of the emergency exemption program. The Agency will apply the negligible risk standard in evaluating emergency exemption requests in a manner similar to other regulatory decisions concerning pesticides which are carcinogens. If associated dietary risks are greater than negligible, the Agency would consider granting the exemption only if the benefits are so great that they outweigh the risks. In this connection, EPA considers, among other things, whether use of the unregistered pesticide would present a lower dietary risk than currently registered alternatives.

Generally, an emergency exemption will not be granted if adequate progress is not being made toward full registration of the pesticide use. In the recent past, the Agency has treated the need for a section 409 tolerance as an automatic bar to a request for an exemption to allow emergency use of a substance that has been found to induce cancer in appropriate animal studies, on the assumption that no section 409 clearance could be issued and accordingly there would be no possibility of registration. In the future, however, the Agency will not consider the need for a 409 tolerance, *per se*, as blocking progress toward registration of such a pesticide. Rather it would consider whether it is likely the pesticide may subsequently be registered according to the policies outlined in this document.

6. Minor Uses

FIFRA directs the Agency to make the registration process more flexible for minor use pesticides. Use of the approaches set forth in this Notice should favor minor uses because they ordinarily involve lower exposures than uses of chemicals on major crops such as wheat or corn.

As with section 18 requests, the need for a section 409 tolerance will no longer be treated as an absolute bar to further consideration of a potentially carcinogenic minor use pesticide. In fact, a number of the pesticides listed in Table V of this document as eligible for reconsideration under the negligible risk standard are intended for minor uses.

IV. Response to the Third Recommendation of the NAS

The NAS has recommended that EPA focus on one major crop at a time and evaluate the risks posed by all the major pesticides registered for that crop rather than evaluating individual pesticides according to current procedures. The Agency's historical approach to reregistration has been to divide pesticides into "clusters" according to their predominant uses. A cluster is a group of chemicals and a group of sites that are closely correlated.

This approach was described in a **Federal Register** notice (45 FR 75488, November 14, 1980). The clusters were then ranked so that higher priority for review was given to those clusters that have significant use on food crops or were already known to pose special problems. Each individual pesticide chemical within the cluster is then evaluated, one at a time, for all of its uses. Thus, most of the major pesticides used on the 15 "high-consumption" crops identified by the NAS Report have had a recent comprehensive review or are scheduled for one in the near future. Appendix D of this document provides a status report on the Agency's review of 10 chemicals which have been identified as posing certain theoretical risks.

The NAS committee's recommended modification of EPA's approach is designed to ensure that final Agency decisions actually reduce dietary risk, help to preserve benefits of pesticide uses that pose low risks, and help to conserve limited Agency resources. The Agency agrees that this approach has merit in certain cases where the apparent risks are high and sufficient information is available to make comparative risk/benefit assessments. It also allows greater certainty that the final result will improve public health by comparing the risks and the benefits of the major alternatives at the same time.

Given the progress already made in the reregistration process, it is likey that the Agency will have the needed data on the major pesticides at approximately the same time so that comparative assessments can be done, at least for some crop/chemical combinations. During 1988, in fact, the Agency will be able to complete risk assessments for all but one of the six major fungicides (the exception is folpet, whose food use is relatively minor) and to compare the risks and benefits for these chemicals as recommended by the NAS.

There are, however, some problems associated with this approach. Timeliness will certainly be sacrificed in many cases. There will be more data to evaluate, and decisions will be more complex. Comparison of benefits may be difficult: available efficacy data are not designed to permit sophisticated benefits comparisons, and knowledge of all practical alternatives to a given pesticide may be limited and hard for the Agency to identify. For example, a pesticide might be effective for certain uses and yet might never have been registered for those uses because of a registrant's marketing strategy. Finally, it would not be advisable or protective of the public health to delay consideration of significant risks associated with a pesticide just because other pesticides used on the same crops cannot be evaluated at the same time due to the lack of key data. Consequently, the Agency expects to continue with its basic reregistration scheme for scheduling initial Registration Standards. However, adjustments will be made to allow consideration of alternatives whenever sufficient information is available and it appears to improve our ability to focus on high risk chemical/crop combinations.

Because of the Agency's basic priority scheme for Registration Standards, complete data bases for pesticides used on similar crops should be available at

roughly the same time, as in the case with the fungicides discussed in Appendix D. The sophistication of the comparative analyses may vary significantly, however, depending on the level of risk associated with the pesticide under review. In the case of cyanazine, for example, the final decision document discusses the known effects and the regulatory status of major alternatives briefly, but does not provide an extensive analysis because the Agency had concluded that the continued use of cyanazine did not pose unreasonable risks. It is likely, nevertheless, that the Agency will find it increasingly possible to make critical comparisons of pesticides which may substitute for each other.

V. Response to the Fourth Recommendation of the NAS

EPA is taking steps to implement the NAS recommendation to develop improved tools and methods to estimate more systematically the overall impact of prospective regulatory actions on health, the environment, and food production. A major new analytical tool that allows the Agency greater sophistication in the assessment of dietary risk is the computerized Tolerance Assessment System (TAS). TAS contains information on toxicology and residue date for particular pesticides, as well as food consumption information. Consumption information for various foods is based on a 1977–1978 nationwide survey of food consumption for different subgroups conducted by the U.S. Department of Agriculture (USDA). The TAS can be used to estimate dietary levels of pesticide residues for the average individual, as well as for 22 population subgroups, including various age and ethnic groups, infants, pregnant women, and nursing mothers. The system can also be used to differentiate overall consumption patterns by season and by region.

One option offered by the TAS is the calculation of separate TMRCs (Theoretical Maximum Residue Contribution, see Appendix A) for each of the 22 subgroups, based on the assumption that residues will be present at tolerance level and that 100 percent of the crop is treated. Alternatively, the TAS may be used to calculate an "Anticipated Residue Contribution" (ARC) where verifiable data are available on the actual distribution of residues on treated crops, the dissipation or concentration of residues during the storage, transport, and processing of food commodities, and/or the percentage of the total crop actually treated with a pesticide.

Since 1986, the TAS has been used to determine if there are particular dietary concerns for pesticides undergoing reevaluation in the Registration Standard Process, for new chemicals and new uses of old chemicals, and for any other pesticide for which the Agency has a special dietary concern.

To solicit guidance on the scientific criteria that EPA should consider in developing its policy regarding the use of the TAS, the Agency presented a paper entitled "Briefing Paper on the Tolerance Assessment System (TAS) for Presentation to the FIFRA Science Advisory Panel" to that Panel in March 1987 to address a number of specific issues. A copy of that paper and the Report of SAP Recommendations is available on request from the Office of Pesticide Programs. In particular, the Agency requested advice on the scientific criteria the Agency should consider for the use of population subgroups in a dietary exposure analysis, and for the use of percentiles of exposure within a particular population in estimations of dietary risk. The Agency also asked the Panel to address the appropriate margins of safety which the Agency should use for determining acceptable exposures for subgroups or percentiles of exposure within a subgroup. Finally, the Agency requested guidance on the scientific criteria that should be used in identifying appropriate residue levels for use in dietary exposure estimations, and on data presentation.

In response, the SAP noted that the TAS will enable the Agency to predict exposure levels for population subgroups with far greater precision than the current system and thus represents an improved approach. On the issue of the appropriate use of population subgroups, the Panel, noting that the focus of the TAS is on exposure rather than on toxicity, commented that calculations based on body weight, will tend to overstate the risk to infants where there is no toxicological basis for increased susceptibility. To correct for this factor, the Panel recommended that the Agency explore the use of body surface rather than body weight as a basis for comparison. On the safety factor issue, the Panel did not recommend any changes to the traditionally-used one-hundred fold safety factor. The Panel also suggested that the use of a controlled field study would be more likely to provide useful data for the TAS than monitoring data. Finally, the Panel recommended that data should be presented in such a way as to indicate the reliance of the approach on exposure, rather than on toxicity, and the Agency should indicate how relevance, biological significance, and other issues could be introduced into the process. The Agency will work to refine the TAS, as recommended by the Panel, and will seek to develop additional tools and methods to improve its risk/benefit assessment capabilities.

VI. Related Agency Activities

The Agency is working on a number of other initiatives and program improvements which are related to the issues discussed here.

A. FFDCA Section 408/409 Procedural Rules

The Agency has made considerable progress in developing consistent procedural rules pertaining to section 408 and 409 tolerances. Elsewhere in this issue of the **Federal Register**, the Agency is proposing new procedural rules for establishing, modifying, and revoking section 409 food additive regulations, as well as procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under sections 408 and 409. These proposed rules not only will modernize out-of-date hearing rules, but also will restate and update practices that have not necessarily been codified. The next step in the regulatory process will be to expand the regulations to include (1) substantive interpretations and criteria for determining when tolerances and food additive regulations are required and what data are required in support of them and (2) the criteria and assumptions to be used by EPA in determining whether a tolerance or food additive regulation should be established, modified or revoked.

B. Encouraging Safer Pesticides

The Agency plans to take steps to encourage the development of safer pesticides. The Agency expects to publish a **Federal Register** notice detailing this plan in the near future.

C. Promoting Innovation in Pest Control

Despite gaps in current data bases, there are indications that human health and/or environmental risks exist for many currently registered nematicides and fungicides. In the case of nonfumigant nematicides, product efficacy depends largely on solubility. Solubility, however, increases soil mobility, giving rise to concern regarding ground and surface water contamination. Certain of the fumigant nematicides also are currently under Agency scrutiny because of potential chronic risks which may be incurred by workers. Of the registered fungicides, 12

are currently undergoing Special Review, and additional classes of fungicides may be placed in Special Review in the near future.

The Agency is working with the Agricultural Research Service and the Cooperative State Research Service to focus USDA research efforts on development of alternative controls for nematodes and plant disease. The Agency has identified a particular need for alternative controls for nematodes on citrus and potatoes and for plant diseases on tomatoes, grapes, leafy vegetables, and pome fruits. The Agency is also considering what incentives can be introduced into the registration process to encourage development of alternative controls. These may include waivers of tolerance fees and registration fees for new pesticides that fall into specified categories for which alternative controls are desirable.

The agency has also joined with USDA, FDA, and private industry to establish a National Pest Management Task Force. The Task Force will identify those pests of economic significance for which effective chemical controls are no longer available or for which little or no research or registration effort is underway. The Task Force will develop, in conjunction with member agencies and private associations, mechanisms fostering the development of acceptable control technologies.

D. Revision of Product Performance Guidelines

To improve the efficacy data base, the Agency is in the process of revising its Product Performance Guidelines to require the development of "comparative product performance data." In the past, product performance data requirements have concentrated on efficacy data that demonstrate how well a pesticide controls the pests listed on the label. The proposed revisions will require that registrants develop and maintain data which will provide information on performance of a pesticide compared to alternative pesticides, non-chemical techniques, and untreated controls.

E. Updating Food Consumption Data and Other TAS Improvements

Resources permitting, EPA hopes to update the food consumption data as part of our overall effort to implement TAS fully. Results of the latest USDA dietary survey should start coming in later this year, and the Agency plans to begin updating the TAS data in 1989. Subsequently, EPA hopes to update TAS every 10 years as results of a new USDA survey become available. The Agency also hopes to be able to enhance the analytical capabilities of TAS and to develop statistical guidelines and computer support for the incorporation of more accurate anticipated residue data based on actual residue studies.

F. Updating Animal Feed Data

Like human food consumption estimates, animal food consumption estimates also need updating. The Agency is currently working on a project to determine whether by-products from food processing plants are significant components of animal feeds. Once these significant feed items are identified, percent of diet figures for these new feed items will be determined.

G. Guidelines and Protocol Improvements

To provide for improved data for use in risk assessments, the Agency is developing guidelines and standard evaluation procedures for the use of registrants and food producers in the generation and submission of data to show actual pesticide residues in food. The Agency will also be working with the food industry to develop protocols for processing studies designed to show what happens to pesticide residues during processing.

H. Reclassification of Raw Versus Processed Commodities

The Agency intends to develop new criteria for classification of commodities as raw or processed in order to update and eliminate inconsistent 408/409 commodity classifications.

I. Factoring in Drinking Water Exposure to Pesticides

The Agency is concerned about human intake of pesticides via routes other than food, particularly drinking water. Historically, the Agency has based its decisions on tolerances only on dietary exposure from foods treated with pesticides. More recently the Office of Pesticides Programs (OPP) and the Office of Drinking Water (ODW) have begun focusing on drinking water as a potential source of pesticide residues in the diet. The Agency has recently made significant progress in its efforts to integrate activities or OPP and ODW with respect to pesticides in groundwater. All Health Advisories for pesticides in drinking water are now developed jointly by ODW and OPP, using the same data base and the same reference dose.

As a part of EPA's implementation of its Agricultural Chemicals in Groundwater Strategy, the Agency will be considering the extent to which pesticide residues in drinking water are a significant factor in dietary exposure to pesticide residues. This may be difficult in some cases, but is necessary in order to get a more complete picture of exposure. In cases where pesticides do reach drinking water supplies, it is necessary to factor this exposure into tolerance decisions.

For example, exposure to aldicarb through drinking water as a result of its presence in groundwater is being considered in the tolerance assessment in the special review of aldicarb. This is a case in which the data are available, and it is clear that drinking water is a potential route of exposure.

VII. Conclusion

In conclusion, the Agency believes that he recommendations of the NAS offer the Agency very useful guidance in improving and refining the process of evaluating pesticides for registration and tolerance purposes. Consistency between the criteria EPA uses in registering pesticides under FIFRA and in setting tolerances for pesticide residues on food under sections 408 and 409 of the FFDCA is a clearly desirable goal. A negligible risk approach to the pesticide regulatory process would allow the Agency to move in the direction of greater consistency, and allow the registration of new pesticides that pose lower risks than certain currently registered products.

The Agency also believes it would be desirable to have the authority to review all food additive regulations, as well as tolerances and registration actions, under a risk/benefit standard. Only by using a risk/benefit standard for all pesticide decisions will the Agency be able to achieve real consistency, and have the latitude to properly exercise its judgment based on a consideration of all relevant factors. Such an approach, over the long run, will be most likely to reduce the total risk attributable to pesticide use. As discussed in this document, the Agency cannot fully implement this goal without legislative change.

Nevertheless, the Agency will propose to follow the negligible-risk approach to the extent possible in future rulemakings on individual pesticides.

With regard to the other recommendations of the NAS, the Agency is focusing its energies on reviewing chemicals under a prioritization scheme in order to reduce risks attributable to pesticide use. Finally, the Agency is engaged in developing tools such as the Tolerance Assessment System to refine its ability to make regulatory decisions.

Dated: October 11, 1988.

Victor J. Kimm,

Acting Assistant Administrator, Office of Pesticides and Toxic Substances.

Appendix A—Procedures Followed by the Agency in Determining Allowable Residue Levels for Tolerances and Food Additive Regulations

In setting tolerances, EPA reviews residue chemistry data and toxicology data. The required data are essentially the same as those necessary to support the registration of a pesticide product used on food. To be acceptable, a tolerance level must be both high enough to cover residues likely to be left when the pesticide is used in accordance with its labeling, and low enough to be safe.

The Agency estimates the level of daily exposure which is not expected to cause appreciable risks during the human lifetime. With regard to risks other than cancer, this level is called the Accpetable Daily Intake (ADI) or Reference Dose (RfD). The ADI is calculated by dividing the no-observed effect level (NOEL) (the dosage level at which any adverse effects observed at higher dose levels are absent) from the most senstivie test showing adverse effects by an appropriate safety factor. This calculation is based on the concept that the risks of concern other than cancer are threshold effects—i.e., below the ADI there will be no adverse effect.

EPA also calculates the theoretical maximum residue contribution (TMRC), which represents the maximum amount of residue of a pesticide which a typical human could ingest by consuming food that bears the maximum level of the residue allowable under all existing and proposed tolerances. The TMRC is calculated by multiplying the tolerance level for each food by the amount of that in the typical American diet (according to available statistics on food consumption patterns) and totalling the values for all foods which may bear residues of that pesticide.

The TMRC is then compared with the ADI, and the tolerance is established (assuming no other concerns) if the TMRC is less than the ADI. A tolerance may be established in certain situations where the TMRC is higher than the ADI if residue data establish that the actual human exposure is not likely to exceed the ADI. For pesticides which may induce cancer, in addition to performing the ADI calculations discussed above for the effects of concern other than cancer, the Agency usually performs a quantitative risk assessment for the cancer risk. Cancer ordinarily is treated as a non threshold effect, because of a lack of evidence to refute the assumption that the carcinogenic response in humans to low doses is approximately proportional to the response in animals to high dose. Thus, some risk presumptively could result even at very low levels of exposure.

EPA's current carcinogencity testing scheme requires the use of several test doses (up to a level at or near the maximum tolerated dose) in at least two animal species, in order to magnify the likelihood of detection of a carcinogenic response in an economical, practically-sized animal test population (50 animals per sex per dose level) animal test population. At the present time, there is not better way to assess practically the potential carcinogenicity of a pesticide to which the entire U.S. population may be exposed. The animal data, and any available human epidemiology data, are assessed in accordance with EPA's "Cancer Assessment Guildelines, designed for use by all Agency programs in implementing a number of statutes designed to protect the public health, provide a qualititative classification scheme regarding human carcinogenicity based on a weight-of-the-eveidence analysis of the available data. Chemicals are classified into five groups, as follows:

1. Group A

Human Carcinogen: (Sufficient evidence of cancer causality from human epidemiologic studies).

2. Group B

Probable Human Carcinogen B1 limited evidence of carcinogenicity from human epidemiologic studies B2 sufficient evidence of carcinogenicity from animal studies.

3. Group C

Possible Human Carcinogen: Limited evidence of carcinogenicity in animals in the absence of human data, including malignant tumor response in a single well-conducted experiment not meeting conditions for sufficient evidence, tumor responses of marginal statistical significance in studies having inadequate design or reporting, benign tumors where short-term mutagenicity tests are negative, and responses of marginal statistical significance in a tissue with high background rate.

4. Group D

Not classifiable as to Human Carcinogenicity: Either inadequate evidence of carcinogenicity or absence of data.

5. Group E

Evidence of Non-Carcinogenicity for Humans: No evidence of carcinogenicity in at least two adequate animal tests in different species or in both adequate epidemiologic and animal studies.

A weight-of-the-evidence determination may involve consideration of, among other things, (1) the particular bioassay test system(s) used, (2) the evaluation of the histopathological and other results of the test(s), (3) the weight to be given to benign tumors, (4) mechanistic considerations, e.g., a situation where the chemical itself does not cause the tumor, but rather the effect the chemical causes at high doses of administration is the tumor-causing agent, and this effect would not occur at the lower doses of human exposure, and (5) the extent to which the overall quality and conduct of the tests accords with good laboratory practices.

Quantitative risk assessments are routinely performed for Category A and B carcinogens. In the case of pesticides classified as Category C, the Agency decides on a case-by-case basis whether the qualitative evidence is sufficient to warrrant a quantitative risk assessment, bearing in mind the possibility that publishing a risk number may create in the public mind an assumption of the reality of a risk to humans that is not supported by the qualitative data from animal studies.

To estimate the cancer risk posed by a pesticide from animal data, the Agency typically uses the linearized multistage model to extrapolate from the results seen at the high doses of the animal study to predict worst case risks at the much lower levels of estimated or actual human exposure. Using this model, a potency factor (Q_1^*, called the "Q-star") is calculated from the 95 percent confidence limit of the slope of the linearized portion of the dose response curve. This potency factor represents a plausible, statistically-derived upper limit to the carcinogenic potency of the potential carcinogen at doses relevant to human exposure, and when multiplied by human exposure, yields an upper bound estimate of the risk. Such an estimate does not represent the actual risk, which may, in fact, be considerably lower or even as low as zero. Estimates of the upper limit on lifetime dietary risk from consumption of residues of a carcinogenic pesticide are calculated by multiplying the Q_1^* by the average human dietary exposure, using food factors derived from USDA data on food consumption patterns. Unless data are available on the actual level of residues in particular food commodities, a worst-case risk will be calculated based on the assumption that all treated food bears

residues at the tolerance level and that 100 percent of the crops are treated.

EPA's current method of deriving these worst-case risk estimates for a carcinogenic chemical from animal data is based on somewhat more conservative premises than the approach of FDA. FDA assumes that humans and animals are equally sensitive to the test chemical on an equivalent body weight basis. EPA, on the other hand, bases its assessment on the premise that different sized animals are not equally sensitive to equal concentrations of a chemical, and makes a surface area adjustment to account for this difference.[1] The effect of this adjustment is to increase the estimate of human risk by about thirteen fold where data are derived from mice, and about 6½ fold when the data source is the rat as the test animal. Accordingly, EPA's risk numbers represent about an order of magnitude of risk greater than would be calculated using FDA methodology.

Appendix B—Food Use Pesticides With Evidence of Carcinogenicity

Active Ingredient	Group [1]	409 Tolerances food	409 Tolerances feed	Needs [2] 409 tolerances
1,3-dichloropropene [3,6]	B2			
2,4-D	D	x	x	
Acephate	C	x	x	
Acifluorfen	B2			x
Alachlor [6]	B2			x
Aliette (fosetyl al)	C			
Amdro	B2			
Amitraz	C			x
Arsenic acid (orthoarsenic acid)	A			
Asulam	C			
Atrazine	C			
Azinphos-methyl	D			x
Benomyl [4]	C	x		
Bifenthrin [5]	C			
Bromacil				
Calcium arsenate				
Captafol	B2			
Captan [6]	B2	x	x	
Chlordimeform & hydrochloride	B2			
Chlorobenzilate				
Chlorothalonil	B2			
Copper arsenate				
Cypermethrin				
Cyromazine [4]			x	
Daminozide [6]	B2	x	x	
Diallate				
Dicamba [7]		x	x	
Dichlorvos (DDVP)	B2	x		
Diclofop methyl				
Dicofol	B2	x		
Dimethipin (Harvade)	C			x
Dinoseb	C			
EDB	B2			
Ethalfluralin			x	
Ethylene oxide [6]		x		
Folpet	B2			
Gardona	C	x	x	
Glyphosate	D	x	x	
Lactofen [5]	B2			
Lead arsenate				x
Lindane	D			x
Linuron [6]	C			
Mancozeb [4,6]	B2	x		
Magnesium arsenate				
Maneb [4,6]	B2			x
Methanearsenic acid			x	
Methidathion	C			x
Methomyl [4]				x
Metiram [4,6]	B2			
Metolachlor	C			
Oryzalin	C	x		
Oxadiazon	C			
O-phenylphenol				
Paraquat	E	x	x	
Parathion	C			
PCNB (pentachloronitrobenzene)	D			
Permethrin				x
Phosmet	C	x		
Pronamide	C			
Propazine	C			
Propiconazole [5]	C			
P-dichlorobenzene [3]	C			
Sodium arsenate				
Sodium arsenite				
Terbutryn	C			
Tetrachlorvinphos		x		
Thiodicarb [4]				x
Thiophanate methyl [4]				x
Toxaphene			x	
Triadimenol (Baytan)	C			
Tridiphane	C			
Trifluralin	C	x		
Zineb [4,6]	B2			

Notes:

[1] Classification in accordance with EPA's Cancer Assessment Guidelines (see Appendix A) for those chemicals for which a weight-of-the-evidence determination has been made.

[2] Chemical has recently been determined to require a 409 tolerance.

[3] Registered uses (formerly not considered to be food uses) which have recently been defined as food uses.

[4] Included due to potentially oncogenic metabolite.

[5] Recently added to list because of newly registered food uses.

[6] Currently in Special Review for dietary concerns.

[7] Included because a contaminant is an oncogen.

Appendix C—Active Ingredients for Which Registration Standards Have Been Issued or are Scheduled for Next Year

Active ingredient	Calendar year of issue
4-aminophyridine	1980
Acephate	1987
ADBAC	1985
Alachlor	1984
Aldicarb	1984
Aldrin	1986
Aliette (fosetyl al)	1983
	[1] 1986
Amitraz	1987
Amitrole	1984
Ammonium sulfamate	1981
	[1] 1989
Anilazine	1983
Arsenic acid (orthoarsenic acid)	1986
Aspon	1980
Asulam	1988
Atrazine	1983
	[1] 1989
Azinphos-methyl	1986
Bacillus thuringiensis	1988
Barium metaborate	1983
Bendiocarb	1987
Benefin	1989
Benomyl	1987
Bentazon/sodium bentazon	1985
Bifenox	1981
Bifenox (SRR)	1989
Bioallethrin	1988
BKLFI-2	1981
Boron (incl. borax & boric acid)	1983
Bromacil	1982
	[1] 1989
Bromoxynil	1989
Butoxicarboxime	1981
Butylate	1983
	[1] 1989
Captafol	1984
Captan	1986
Carbaryl	1984
	[1] 1988
Carbofuran	1984
Carbophenothion	1984
Carboxin	1981
Chloramben	1981
	[1] 1989
Chlordane	1986
Chlordimeform hydrochloride	1985
Chlorobenzilate	1983
	[1] 1989

[1] Theoretically, this assumption is based on the premise that smaller animals, which eliminate heat from the body (an indication of metabolism) more efficiently than larger animals, are more efficient metabolically at detoxifying a chemical than larger animals. This difference in heat elimination has been related to the ratio of the surface area to the volume of the organism. Mathematically, the correction for surface area differences is made by dividing the dose in the animal study by the ratio of human body weight to test animal body weight to the two-thirds power.

Active ingredient	Calendar year of issue
Chloroneb	1980
	[1] 1989
Chlorophacinone	1989
Chloropicrin	1982
Chlorpropham	1987
Chlorothalonil	1984
	[1] 1988
Chlorpyrifos	1984
	[1] 1989
Chlorsulfuron	1982
Chromated arsenicals	1986
Coal tar/creosote	1986
Copper chloride/nitrates	1987
Copper sulfate	1986
Coumaphos	1981
	[1] 1989
Cryolite	1983
	[1] 1988
Cyanazine	1984
Cycloate	1989
Cycloheximide	1982
Cyhexatin	1985
2,4-D	1988
2,4-DB	1988
2,4-DP	1988
Dacthal	1988
Dalapon	1987
Daminozide	1984
DCNA	1983
Deet	1980
Demeton	1985
Dialifor	1981
Diallate	1983
Diazinon	1988
3,5-dibromosalicylanilide	1985
Dicamba	1983
	[1] 1989
Dichlobenil	1987
Dichlone	1981
1,3-dichloropropene	1986
Dichlorvos (DDVP)	1987
Dicrotophos	1982
Difenzoquat	1988
Diflubenzuron	1985
Dimethoate	1983
	[1] 1989
Dioxathion	1983
Diphacinone	1989
Diphenamid	1987
Dipropetryn	1985
Diquat dibromide	1986
Disulfoton	1985
Diuron	1983
Dodine	1987
Endosulfan	1982
EPN	1987
EPTC	1983
	[1] 1989
Ethephon	1988
Ethion	1982
	[1] 1989
Ethoprop	1983
	[1] 1988
Ethoxyquin	1981
Ethyl parathion	1986
2-ethyl-1,3-hexanediol	1981
Fenamiphos	1987
Fenaminosulf	1983
Fenitrothion	1987
Fensulfothion	1983
Fenthion	1988
Fluchloralin	1985
Fluometuron	1985
Folpet	1987
Fonofos	1984
Formaldehyde	1986
Formetanate hydrochloride	1983
	[1] 1989
Fumarin	1980
Glyphosate	1986

Active ingredient	Calendar year of issue
Heliothis NPV	1984
Heptachlor	1986
Hexazinone	1982
	[1] 1988
Isocyanurates	1987
Isopropalin	1981
Lindane	1985
Linuron	1984
MCPA	1982
	[1] 1988
MCPB	1989
Magnesium & aluminum phosphide	1986
Malathion	1988
Maleic hydrazide	1988
Mancozeb	1987
Maneb	1988
Mecoprop	1989
Methiocarb	1987
Metalaxyl	1981
	[1] 1988
Metaldehyde	1989
Methamidophos	1982
Methidathion	1981
	[1] 1988
Methomyl	1982
	[1] 1988
Methoprene	1982
Methoxychlor	1989
Methyl bromide	1986
Methyl parathion	1986
Methylene bis thiocyanate	1989
Metiram	1988
Metolachlor	1980
	[1] 1987
Metribuzin	1985
Mevinphos	1988
Monocrotophos	1985
Monuron	1983
Monuron TCA	1983
Nabam	1987
Naled	1983
Napropamide	1989
Napthalene	1981
Naphthalene acetic acid & salts	1981
Naptalam	1985
Nitrapyrin	1985
Norflurazon	1984
	[1] 1989
OBPA	1981
O-phenylphenol	1989
Oryzalin	1987
Oxamyl	1987
Oxydemeton methyl	1987
Oxytetracycline	1988
Paraquat	1987
PCNB (pentachloronitrobenzene)	1987
Pendimethalin	1985
Perfluidone	1985
Phenmedipham	1987
Phorate	1984
Phorate (SRR)	1988
Phosalone	1981
	[1] 1987
Phosmet	1986
Phosphamidon	1987
Picloram	1985
	[1] 1988
Piperonyl butoxide	1989
Potassium bromide	1984
Potassium permanganate	1985
Prometryn	1987
Pronamide	1986
Propachlor	1985
Propanil	1987
Propargite	1986
Propazine	1989
Propham	1987
Resmethrin	1988
Rotenone	1988

Active ingredient	Calendar year of issue
Simazine	1984
	[1] 1989
Sodium & calcium hypochloride	1986
Sodium omadine	1985
Streptomycin	1988
Sulfur	1982
Sulfuryl fluoride	1985
Sulfotepp	1988
Sulprofos	1981
Sumithrin	1987
Tebuthiuron	1987
Temephos	1981
Terbacil	1982
	[1] 1989
Terbufos	1983
Terbutryn	1986
Terrazole	1980
	[1] 1989
Tetrachlorvinphos	1988
Thiophanate ethyl	1985
Thiophanate methyl	1988
Thiram	1984
TPTH	1984
Trichlorfon	1984
Trifluralin	1987
Trimethacarb	1985
Vendex	1987
Warfarin	1981
	[1] 1989
Zinc phosphide	1982

[1] Second round of review of the earlier registration standards.

Appendix D—Examples of Pesticide Chemicals With Tolerance Issues Currently or Recently Under Review

1. Benomyl

Benomyl is a broad spectrum systemic fungicide that controls a wide variety of plant diseases in field and vegetable crops, rice, tree fruit and nut crops, greenhouse, ornamentals, and turf sites. It is also used as a postharvest dip for fruits. In the Registration Standard issued for benomyl on March 31, 1986, the Agency concluded that benomyl and its major metabolite, 4-methyl benzimidazole carbamate (MBC), were possible human carcinogens (Group C), based on a significant increase in hepatocellular carcinomas in closely related strains of mice. Based on the established tolerances and the percent of crop treated, the Agency estimated any potential oncogenic risk from dietary exposure to be in the range of 10^{-5}. The Agency noted, however, that this quantitative assessment should not be accorded much weight since the evidence for oncogenicity is limited, but could be taken to represent a worst-case upper limit for risk. The Registration Standard also reassessed the residue data base supporting the established tolerance and food additive regulations for benomyl and concluded that additional data were required to fill the identified data gaps. A conclusion was also reached that additional food

additive regulations under section 409 may be required to cover residues in the processed fractions of citrus, tomatoes, grapes, and soybeans.

The additional residue data required by the Standard were received in the summer of 1987 and are under review. When general metabolism data (due July 1989) are received, EPA will be able to complete the tolerance reassessment for benomyl.

If the new data indicate that additional section 409 regulations are necessary, the Agency could establish such regulations under a de minimis approach if weight-of-the-evidence considerations lead to a conclusion that the risk to humans is negligible.

2. Captafol

Captafol, which was originally registered in 1962, is used as a fungicide on various vegetable and fruit crops. The Registration Standard for captafol, completed in September 1984, estimated a dietary risk of 10^{-4} based on tolerance levels, and required registrants to produce data on actual residues in food crops and additional oncogenicity data. A Special Review was also initiated. In early 1987, EPA classified captafol as a B2 (probable human) oncogen. The major registrant, Chevron Chemical Company, voluntarily cancelled its captafol registrations in March 1987. Formulators followed suit the next month. On August 22, 1988, the Agency terminated the Special Review because all registrations of captafol products had been cancelled. Also, the Agency plans to initiate action during 1989 to revoke the remaining tolerances for captafol.

3. Captan

Captan (N-trichloromethylthio-4-cyclohexane-1,2-dicarboximide) is a widely used agricultural fungicide, currently registered for use on a number of fruits and vegetables, small grains, cotton, grasses, flowers, and numerous household uses. The chemical has been the subject of a recent Registration Standard (issued in March 1986) and a Special Review. The Agency has found that the dietary intake of captan resulted in an increased incidence of uncommon adenomas and adenocarcinomas of the upper gastrointestinal tract in the Charles River CD–1 mouse, an increased incidence of these GI tumors in B6C3F1 mice, and a small dose-related increased incidence of kidney tumors in Charles River CD–1 rats. The Agency also noted positive mutagenic activity in gene mutation and chromosomal aberration assays, and a structural relationship to other compounds that demonstrated oncogenic effects.

In the Standard, the Agency requested residue data, including field trials to generate data for raw agricultural commodities treated at the maximum permitted rate, and studies to show the effect of washing, peeling, cooking, and processing on residue levels. Section 408 tolerances are currently established for a number of commodities which are subjected to processing, namely potatoes, soybeans, tomatoes, oranges, grapes, sweet corn, cottonseed, and pineapples. Section 409 tolerances for captan exist for washed raisins at 50 ppm (21 CFR 193.40; 21 CFR 193.40 redesignated as 40 CFR 185.500 at 53 FR 24666, June 29, 1988) and detreated corn seed at 100 ppm (21 CFR 561.65; 21 CFR 561.65 redesignated as 40 CFR 186.500 at 53 FR 24668, June 29, 1988). However, the 409 tolerance for detreated corn seed is in the process of being revoked for failure to submit supporting data. Section 409 tolerances must be set for some commodities, such as dried prunes and dry apple pomace.

In the Preliminary Determination of the Special Review, issued on June 2, 1985, the Agency determined that the dietary risk could be as high as 10^{-4} based on the assumption that residues are present at tolerance levels. The new data will allow the Agency to refine its risk assessment, and determine whether the currently established tolerances and food additive regulations should be revoked.

4. Chlordimeform

Chlordimeform was previously registered for a number of fruit and vegetable insecticide uses; however, most food uses were withdrawn by the registrants in 1976 because preliminary results of a mouse study suggested that chlordimeform caused malignant blood vessel tumors. In 1978, chlordimeform was registered for use on cotton with new restrictions to reduce applicator exposure. A Registration Standard was published for chlordimeform in January 1986, and the chemical has been referred to Special Review because of worker exposure concerns. In conducting the Registration Standard review, the Agency assessed dietary risks from the cotton use, using data on the percent of cotton crops actually treated (between 10 percent and 12 percent), and actual residue data showing chlordimeform residues ranging from 1 to 2 orders of magnitude lower than tolerance levels. Dietary risk from actual residues of chlordimeform occurring in commodities derived from treated cotton was estimated at 10^{-7}. Under the de minimis approach, the food additive regulations on commodities processed from cotton would be retained.

Very recently, the two registrants of the technical product have offered to voluntarily cancel the remaining cotton use, effective within the next year.

5. Chlorothalonil

Chlorothalonil is a fungicide used on numerous crops such as fruits, vegetables, and peanuts, as well as on ornamental turf. The chlorothalonil Registration Standard, issued in September 1984, identified significant data gaps; data have been submitted in response to the requirements set forth in the Standard. Based on such data, EPA has classified chlorothalonil as a B2 (probable human) oncogen. There are no existing 409 food additive regulations for this chemical; residue data required in the Standard will allow the Agency to determine if such regulations are necessary. A Revised Registration Standard and Tolerance Reassessment is scheduled for completion in September 1988. The Agency will assess during the Standard review whether the chemical should be referred to Special Review.

6. EBDCs

The EBDCs (ethylene bisdithiocarbamates) are a group of six fungicides (maneb, mancozeb, amobam, nabam, metiram, and zineb) with a common contaminant, metabolite, and degradation product called ethylene-thiourea (ETU). In 1984, a data call-in imposed extensive data requirements on the registrants of the EBDCs to enable the Agency to perform a comprehensive risk assessment. In response, registrants of amobam cancelled their products, and registrants of nabam deleted all food uses from their labels. Based on data received in response to the data call-in, the Agency has classified ETU and the EBDCs as B2 (probable human) oncogens. As set forth in the Registration Standard issued in April 1987, the dietary risk for mancozeb is estimated to be 10^{-4} based on actual residue data. The total dietary risks resulting from the use of all the EBDCs is likely to be higher. Residue data on maneb and metiram were received in March 1988. For zineb, which represents only 5 percent of total EBDC usage, residue data will not be available until 1991.

All the EBDCs have been placed in Special Review; the Preliminary Determination is scheduled for early 1989. The Agency expects to conduct a risk assessment of the dietary risk posed by these chemicals in the summer and fall of 1988, and then to conduct a comparative risk/benefit assessment of the major fungicides (EBDCs, captan,

chlorothalonil and benomyl) before making a regulatory decision on any one of them. As part of that review, the Agency will also determine what action to take with respect to the existing tolerances and food additive regulations. There are several food additive regulations for mancozeb, and data may indicate the need for such regulations for maneb, metiram, and zineb.

7. Folpet

Folpet is a broad spectrum fungicide which, in the past, has been used on both food and nonfood crops and as an industrial fungicide in the manufacture of coatings and plastics. Non-agricultural uses and home and garden uses have accounted for approximately 86 percent of its total usage. A Registration Standard was issued for folpet in June 1987, and additional residue data (due in 1991) were requested. Currently, all food uses have been suspended for failure to provide data. Current indications are that the only food use which is likely to be supported by data is the use on avocadoes.

The chemical has been classified as a B2 (probable human) oncogen. Prior to the recent suspensions, theoretical dietary risks, based on the assumption that residues would be present at tolerance levels, were in the 10^{-4} range, but the Agency believes that, if actual residue data and percent of crop treated were factored into the risk calculation, risks would be likely to be in the 10^{-6} range. There are no existing section 409 food additive regulations for folpet. If any food uses are reinstituted, and if residue data show that there is a concentration effect during processing, such regulations would be necessary. If the data indicate that the risk is in fact in the 10^{-6} range, the *de minimis* approach could be followed in establishing such regulations.

8. Linuron

Linuron, a herbicide used for pre- and post-emergent control of annual grasses and broadleaf weeds, was initially registered in 1966, and a number of tolerances have been established since then for its use on soybeans, corn, cotton, sorghum, wheat, asparagus, carrots, celery, parsnips, and potatoes. There are no section 409 food or feed additive regulations for linuron. However, the Agency has requested processing data to demonstrate whether the chemical does concentrate in processed commodities.

In 1984, a Registration Standard was issued for linuron and additional residue and chronic effects data required. At the time of the Standard, the Agency estimated dietary oncogenic risk in the range of 10^{-4} (based on residues at tolerance levels with some adjustment for percent of crop treated). However, since the time the Special Review was initiated, the Agency has issued its oncogenicity classification guidelines and has concluded that linuron is a group C (possible human) oncogen. Because only benign tumors are formed, these tumors occur only late in life, and there is no evidence of mutagenic activity, the Agency has concluded that linuron's human carcinogenic potential is low. Therefore the Agency has recently terminated the Special Review based on oncogenicity.

9. Permethrin

Permethrin is an insecticide first registered in 1979 for use on cotton, with a wide variety of other uses, including vegetables and pears (registered in 1982). The toxicology data base for permethrin is complete. The Agency has classified permethrin as a Group C oncogen, based on the induction of lung and liver tumors in female mice. Based on the very weak evidence of oncogenicity observed, the Agency determined that a quantitative risk assessment for this chemical is inappropriate because the likelihood of oncogenic effects in humans from low levels of permethrin is non-existent or extremely low. The Agency has, however, regulated this chemical as a possible oncogen for Delaney Clause purposes, and has declined to set 409 food additive regulations.

A tolerance for tomatoes, a commodity which is usually subject to processing, was established for Florida tomatoes, subject to a restriction that the tomatoes only be used for the fresh market. This approach was believed to be feasible for permethrin because of the unique circumstances of tomato production in Florida, i.e., 98 percent of the tomatoes were for the fresh market, and the limited number of canneries in the area agreed not to process tomatoes into a form which would result in concentrated residues (such as paste, puree, or ketchup). However, the Agency subsequently was informed that a cannery in Florida was processing permethrin-treated tomatoes into puree and paste. This incident demonstrates the impracticality of expecting growers and processors to distinguish between permethrin-treated tomatoes and untreated tomatoes.

In addition, the Agency is still seeking processing data to clarify whether residues will concentrate in any of the other processed commodities produced by Florida canneries. If the Agency were to follow the *de minimis* approach, permethrin would be a potential candidate for section 409 food additive regulations for additional uses in which concentration of the residues occurs during processing.

10. Trifluralin

Trifluralin is a selective preemergent herbicide registered for use on a variety of crops for the control of annual grasses and certain broad leaf weeds. This pesticide has been classified as a Group C carcinogen based on a significant increase in the incidence of malignant tumors of the renal pelvis, of the kidney and thyroid gland of male rats, and in the incidence of combined malignant and benign urinary bladder tumors in female rats at the highest dietary concentration tested. The Agency indicated in its August 1986 Registration Standard that processing data is being required for potatoes, sugar beets, soybeans, citrus fruits, sorghum, barley, corn and wheat grain, alfalfa hay, flax seed, cottonseed, peanuts, spent peppermint and spearmint hay, sugarcane, and sunflower seed. These data could indicate that additional food additive regulations are necessary to support current use patterns. Such regulations could be established under a *de minimis* approach if risks are found to be sufficiently low. Otherwise, if the Agency takes the approach that such regulations would be barred by the Delaney Clause, the corresponding section 408 tolerances might be subject to revocation, thereby eliminating many of the beneficial uses of this pesticide.

Appendix E—Candidates for Negligible Risk Consideration

Chemical	Type	Status	Proposed Use	Group
Aliette	Fungicide	New Use	Hops	C
Amitraz	Insecticide	New Use	Apples	C
Apollo	Insecticide	New Chemical	Apples	C
Cypermethrin corn	Insecticide	New Uses	Soybeans	C
Dicamba [1]	Herbicide	New Use	Cotton	Not classified.

Chemical	Type	Status	Proposed Use	Group
Glyphosate	Herbicide	New Use	Wheat	C/D
Harvade	Herbicide	New Use	Sunflowers	C
Methomyl [2]	Insecticide	New Use	Hops	Not classified.
Metolachlor	Herbicide	New Uses	Apples, flax, sunflowers	C
Permethrin corn	Insecticide	New Uses	Soybeans, apples, tomatoes	Treated as C
Savey	Insecticide	New Chemical	Apples	C
Verdict	Herbicide	New Chemical	Soybeans	In review

[1] A nitrosoamine contaminant of dicamba is an oncogen.
[2] Acetamide is an oncogen and an animal metabolite of methomyl.

Appendix F Group C Carcinogens' Status Re Risk Quantification

The decision as to whether or not quantification of risk for Group C chemicals is appropriate is subject to change as the Agency analyzes new data or reevaluate existing data. The following lists indicate those chemicals for which, as of August 1988, the Agency has determined a quantified risk number should or should not be used. There are a few other Group C chemicals for which this decision is still pending.

Risk Quantification Deemed Inappropriate

acephate
Aliette (fosetyl al)
amitraz
asulam
benomyl
bifenthrin
cypermethrin
dimethipin (Harvade)
fomesafan
gardona
linuron
methidathion
metolachlor
oryzalin
oxadiazon
parathion
permethion
phosmet
pronamide
propiconazole
triadimenol (Baytan)
tridiphane
trifluralin

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Part VII

Environmental Protection Agency

40 CFR Parts 177, 178, 179 and 180
Food Additive Regulations Concerning Pesticide Residues: Procedural Regulations: Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 177, 178, 179, and 180

[OPP-260051; FRL-3384-7]

Food Additive Regulations Concerning Pesticide Residues: Procedural Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing rules to set forth procedures for establishing, modifying, or revoking food additive regulations concerning pesticide residues in or on processed food under section 409 of the Federal Food, Drug, and Cosmetics Act (FFDCA), 21, U.S.C. 348. EPA also is proposing procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under FFDCA sections 408 and 409. Accordingly, EPA is proposing to replace the current procedural rules concerning objections and hearings under FFDCA section 408 by the procedural rules proposed herein. Elsewhere in this issue of the **Federal Register**, EPA is issuing a notice addressing the Delaney Paradox.

DATE: Written comments, identified by the document control number [OPP-260051], must be received on or before December 19, 1988.

ADDRESS: By mail, submit comments, preferably in triplicate, to: Public Docket and Freedom of Information Section, Field Operations Division (TS-757C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

In person, deliver comments to: Room 236, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

All written comments will be available for public inspection in Room 236 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Rosalind L. Gross, Registration Division (TS-767C), Office of Pesticide Programs, Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Office location and telephone number: Room 716, CM #2, 1921 Jefferson Davis Highway, Arlington, VA ((703)-557-7700).

SUPPLEMENTARY INFORMATION: EPA is proposing rules to set forth procedures for establishing, modifying, or revoking food additive regulations concerning pesticide residues in or on processed food under section 409 of the FFDCA, 21 U.S.C. 348. EPA also is proposing procedural rules governing the filing of objections, requests for hearings, and the holding of hearings under FFDCA sections 408 and 409. Accordingly, EPA is proposing to replace the current procedural rules concerning objections and hearings under FFDCA section 408 by the procedural rules proposed herein.

Reduction in public reporting burden for this collection of information as a result of this amendment is expected to average approximately 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM-223, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503.

I. Background and Need for Regulations

EPA administers that portion of the FFDCA under which allowable levels (called "tolerances") are established for pesticide residues in or on raw agricultural commodities or on processed foods. This authority was transferred to EPA by Reorganization Plan No. 3 of 1970.

Under FFDCA section 402(a)(2)(B), a raw agricultural commodity (RAC) is "adulterated," and thus illegal to ship or sell in interstate commerce, if it bears or contains any residue of a pesticide chemical that is "unsafe" within the meaning of FFDCA section 408. Section 408, in turn, states that, with certain minor exceptions, residues of a pesticide chemical in or on a particular raw agricultural commodity are "unsafe" unless they are permitted by a regulation issued under section 408 that establishes a "tolerance" (maximum allowable level) for residues of that pesticide chemical on that commodity, or establishes an exemption from the requirement for a tolerance.

Similarly, under FFDCA section 402(a)(2)(C), food (whether a RAC or a processed food) is "adulterated" if it is, or if it bears or contains, any food additive that is "unsafe" within the meaning of FFDCA section 409. Section 409 says that a food additive is "unsafe" unless there is in effect a regulation issued under section 409 stating the conditions under which the food additive may be safely used (which may include a tolerance specifying the residue levels that may remain in the food), and the use in question conforms to the food additive regulations, including any tolerance that has been specified in the regulation.

Most food additives are not pesticides, or course. The Food and Drug Administration (FDA) administers the FFDCA with regard to food additives other than pesticides or pesticide residues. When Congress enacted FFDCA section 409 in 1958, it chose not to require tolerances under section 409 for pesticide residues authorized by tolerances under section 408, if certain conditions are met. The FFDCA thus provides in section 402(a)(2)(C) that if a pesticide chemical has been used on a raw agricultural commodity (RAC) in conformity with a section 408 tolerance (or exemption), a separate section 409 regulation is not required for a "carryover" residue of the pesticide in or on a processed food made from the RAC, if the pesticide residue level in the processed food when ready to eat does not exceed those permitted by the section 408 tolerance (or exemption) for the RAC. However, if the pesticide level in the processed food when ready to eat is higher than that allowed in the parent RAC, or if the pesticide is added to the food during or after one or more processing steps, a separate section 409 regulation is needed if the food is not to be deemed "adulterated".

The procedures prescribed by sections 408 and 409 for issuing regulations are quite similar. Under each provision, with minor variations, a regulation is initially promulgated by an informal process; the informal process may be initiated either by submission of a petition or at the Agency's own initiative. The Agency is to evaluate the data before it and set a tolerance at a level that is no higher than needed to accomplish the intended effect, and in any event at a level that is adequate to protect the public health. The regulation becomes immediately effective. Thereafter, any person who is adversely affected by the regulations may file objections to the regulation and request that the Agency hold a formal evidentiary hearing. The Agency's decision on the objection must, with respect to "questions of fact," be based only on evidence of record. The Agency's decision is judicially reviewable in the courts of appeals.

Section 408 was enacted in 1954, and in 1955 the Food and Drug Administration issued procedural regulations to implement it. (20 FR 9632, December 20, 1955; 21 CFR Part 120 (1956 ed.).) The current version of those regulations is found in 40 CFR Part 180. The procedures adopted in 1955 are

largely still in place, although some additions and changes have been made since then.

The Part 180 regulations are obsolete in several respects. Their provisions regarding the treatment of objections, requests for hearings, and holding hearings do not contain provisions like those in FDA's regulations that allow persons to file objections and receive a judicially reviewable agency ruling without first having to request and participate in a hearing. The hearing rules contain out-of-date provisions regarding the respective roles of the presiding officer and the Administrator in issuing decisions. The hearing rules also fail to provide that direct testimony ordinarily should be in the form of a written statement, rather than being given orally; written direct testimony is now routinely used in hearings under the Federal Insecticide, Fungicide, and Rondenticide Act (FIFRA), 7 U.S.C. 136–136y, and in hearings conducted by FDA under section 409.

Section 409 was enacted in 1958. FDA regulations to implement section 409 include 21 CFR Parts 170 and 570, which contain definitions, criteria, and interpretations regarding food additives; 21 CFR Parts 171 and 571, which specify how to file a food additive petition and how FDA will respond to a petition during the informal stage; and 21 CFR Parts 10 and 12, which contain provisions dealing with objections and requests for hearings and also set forth rules governing the conduct of evidentiary hearings.

EPA has never issued regulations comparable to FDA's dealing with the procedures and criteria to be used in issuing food additive regulations for pesticide residues in or on processed foods under FFDCA section 409, or in dealing with objections and hearing requests. In the past, this lack of procedural regulations has not caused many problems. Insofar as initially establishing food additive regulations is concerned, the statute itself provides fairly detailed procedures and criteria. Moreover, EPA has never held a hearing under either section 408 or section 409. However, having regulations in place will be important in the future as EPA continues to conduct its process of reregistering old pesticides and reevaluating the FFDCA tolerances associated with these pesticides. Section 409 does not spell out the procedures to be used for modification or revocation of food additive regulations. Instead, section 409(h) states that the Administrator "shall by regulation prescribe the procedure by which (food additive regulations) may be amended or repealed, and such procedure shall conform to the procedure provided in this section for promulgation of such regulations." EPA anticipates that there may be a need to modify or revoke a number of section 409 food additive regulations and that some of these actions may be contested. Moreover, within the past year EPA has received two petitions from citizens and environmental groups requesting the revocation of existing section 409 food additive regulations for particular pesticides. EPA believes it would serve the interests of all concerned if EPA published regulations describing the procedures that EPA will use in processing petitions for the issuance, modification, or revocation of section 409 food additive regulations, how EPA will treat objections and requests for hearings filed by persons who disagree with the EPA action, and how EPA will conduct hearings.

EPA wishes to develop procedural regulations for sections 408 and 409 that are similar and, if possible, integrated. Most food-use pesticides are applied to raw agricultural commodities rather than to processed foods, and most section 409 tolerances for pesticide residues are issued with reference to residues that result from treatment of RACs or other uses of pesticides that yield residues in the RAC. If a section 409 tolerance is needed for a particular processed food, a section 408 tolerance usually is needed for the parent raw agricultural commodity. Thus, EPA often receives simultaneous petitions for issuance of a tolerance under section 408 for residues of a particular pesticide chemical on a raw agricultural commodity and under section 409 for residues on processed foods made from that commodity, and must act on the related petitions in a coordinated way. The statutory procedures for filing and acting on petitions under the two sections are similar, as are the processes set forth for filing objections, requesting hearings, and holding hearings. Accordingly, EPA believes that it would be useful to have one set of regulations that govern the activities under these two sections of the statute.

In addition to the need for modern statements of the procedures to be used, EPA believes that modern regulations are needed to set forth the criteria, interpretations, and categorizations it will use in implementing sections 408 and 409. Such regulations would restate or update practices that have been developed over many years, some of which never have been codified. They might address subjects such as: Distinguishing between RACs and processed foods; use of animal study data to make predictions about toxicity in humans; use of assumptions regarding the typical human diet, the variations in the diets of various groups of people, and the pesticide residue levels to which food consumers may be exposed; data requirements for the support of tolerance petitions; crop groupings for various purposes; and a number of other substantive issues involved in setting tolerances.

In addition, the subject of differing statutory approval criteria under the two FFDCA sections and under FIFRA needs to be addressed. FIFRA and FFDCA section 408 employ criteria that entail the balancing of risks and benefits of the use of the pesticide. Section 409(c) contains various criteria. The so-called "general safety clause" requires a finding that under the conditions of use to be specified in the regulation, the proposed use of the food additive will be "safe". That clause has been read by one court as involving risk/benefit principles, see *Continental Chemiste Co. v. Ruckelshaus*, 461 F. 2d 331, 340–341 (7th Cir. 1972), and EPA has tended to interpret it that way; FDA, however, has tended to interpret it as a risk-only criterion. The "Delaney clause" says that (with an exception regarding use as an ingredient in feed for animals raised for food production) a food additive cannot be deemed to be "safe" if it is found to induce cancer when ingested by humans or aminals (or, after appropriate studies, to induce cancer in humans or animals). A number of pesticide chemicals that are food additives have been shown to induce cancer in animals in dietary studies. Since many of those chemicals have considerable benefits while posing little if any cancer risk to humans, a strict application of the Delaney clause (or even a very strict, risk-only reading of the general safety clause) could make it impossible to issue or maintain effect food additive regulations under FFDCA section 409 for pesticides that could meet the criteria of FIFRA and FFDCA section 408. This problem was the subject of a 1987 report by the Board on Agriculture of the National Academy of Sciences/National Research Council, entitled "Regulating Pesticides in Food—The Delaney Paradox." Elsewhere in this issue of the **Federal Register** EPA is issuing a notice addressing the Delaney Paradox.

In developing new regulations to govern its activities under the FFDCA, EPA has chosen to proceed in two phases. In the first phase, initiated by this proposed rule, the Agency will deal with the urgent problems: The need for

basic procedural rules governing the filing of FFDCA section 409 petitions for establishing, modifying, or revoking food additive regulations, and the need to modernize the rules governing objections, requests for hearings, and hearing procedures under both section 408 and section 409. In the second phase, which will overlap the first, the Agency plans to develop a unified regulation that will deal with the substantive interpretations and criteria for deciding when tolerances or food additive regulations are needed, what data are needed to support a tolerance or food additive regulation, and what criteria and assumptions will be used by EPA in determining whether a tolerance or food additive regulation should be established, modified, or revoked.

II. Petitions Under FFDCA Section 409

EPA proposes to add a new Part 177 to set forth basic guidance on how persons may petition for the establishment, modification, or revocation of food additive regulations (including tolerances) for pesticide residues in or on processed foods, and how EPA will act on those petitions. Proposed Part 177 would deal only with the informal portion of the FFDCA section 409 process. Provisions governing the formal stage would be found in proposed Part 178, concerning objections and hearing requests, and proposed Part 179, concerning hearings.

To a large extent, proposed Part 177 is derived from the procedural provisions in EPA's regulations regarding FFDCA section 408 tolerances incurrent 40 CFR Part 180 (particularly §§ 180.7 through 180.9, 180.29, and 180.32) and FDA's regulations regarding citizen petitions in 21 CFR 10.30.

EPA wishes to draw readers' attention to the definitions of "pesticide chemical" and "pesticide residue" in proposed § 177.3. By virtue of those definitions, Part 177 would apply to any residue on processed food of any substance that is a "pesticide" used in the production, storage, or transportation of any RAC, or any substance that is a metabolite or degradation product of any such "pesticide." Thus, any residue of such a substance on a processed food would be subject to Part 177 even though the substance was applied during or after the processing of the food, so long as the substance is a "pesticide chemical" because of its use with respect to some RAC.

The proposed rule differs from 40 CFR Part 180 (and from the somewhat similar FDA rules in 21 CFR Part 171) in that it does not discuss the time EPA is allowed to take action on a petition. Section 409 requires the Agency to issue a decision on a petition within 90 days (extendable to 180 days) after it files the petition. Section 408 has a similar provision. Today it is unrealistic to expect EPA to be able to complete the review and evaluation needed to issue a food additive regulation within 180 days in all but the rarest of cases. In fact, if EPA were to try to do so on a routine basis, the likely result would be public criticism for failure to review and evaluate the petitions sufficiently. Indeed, it appears that the statutory schedule was perceived as difficult to satisfy as early as 1955, when the predecessor to 40 CFR Part 180 was issued (21 CFR Part 120, 1956 ed.), judging from the detailed provisions in the 1955 regulation (still in Part 180 today) about the events that stop the "clock" temporarily (e.g., while the agency waits for a reply to a question to the petitioner) or the events that allow the agency to restart the "clock" at zero (e.g., whenever any amendment is submitted).

The Agency proposes not to refer in Part 177 to this "clock". Under section 409, a permitted Agency response to a petition under section 409 is a denial of the petition. If any petitioner informs EPA that it wishes to assert its right to have a decision on a petition to establish a food additive regulation made within the statutory time limit despite the fact that EPA has not finished its evaluation, EPA expects to issue a denial of the petition on the grounds that the evaluation it has been able to undertake has not established that the proposed use of the pesticide chemical will be safe. Commenters are invited to indicate whether they support the inclusion of a provision to this effect in the regulation itself, or whether other references to the statutory "clock" should be included.

Another difference from the current Part 180 provisions is the proposed requirement that a petition include both a full statement of the factual and legal grounds including all relevant information of why its approval would be reasonable and a discussion of information known to be unfavorable to approval of the petition along with any response to this information. The latter provision is derived from the FDA regulations, 21 CFR 10.30(b) and 171.1(c)E. The purpose of this statement is to facilitate the Agency's assessment of the safety of the pesticide chemical. Commenters are invited to indicate whether they support the inclusion of a provision to this effect in the regulation.

The petition would also be required to include a brief summary of the petition (i.e. company name and address, section of the Code of Federal Regulations to be affected if appropriate, chemical name, American National Standards Institute common name, summary of the toxicological data submitted in support of the requested tolerance, the nature of the residue, commodity, tolerance residue value requested, and name of proposed analytical method for residue determination for enforcement purposes) suitable for publication in the **Federal Register** under FFDCA section 409(b)(5). In combination, these provisions should allow more informed public comment on the petition than do current procedures. Since section 409(b) does not require publication of a proposed version of a food additive regulation for notice and comment by the public, the section 409(b)(5) notice of filing may be the only opportunity for members of the public to submit any comments they wish to make. EPA believes that there is likely to be less controversy about food additive regulations if they are issued after an opportunity has been provided for persons to submit reasonably informed comment.

In some cases it is likely that the Agency will conclude that instead of approving or denying a petition, the Agency should issue a proposed rule and invite public comment. This could occur because of the complexity or controversiality of the issues raised by a petition or because of a need to gather information from members of the public. The statute allows the Administrator "at any time, upon his own initiative" to publish a proposed food additive regulation. While it could be argued that the 180-day "clock" provision for response to petitions means that EPA may not respond to a petition by issuing a proposed rule, EPA believes that the better reading, and certainly the more desirable one from a policy standpoint, is to allow such a response to a petition, and proposed § 177.125(b) so states. Comment on this proposed provision is requested.

Part 177 as proposed here does not purport to answer the questions regarding interpretations, criteria, and categorization mentioned in Unit I of this preamble. EPA expects to expand Part 177 extensively to deal with these issues in the Agency's second phase of rulemaking on the subject of FFDCA tolerances. However, EPA does not anticipate that the procedures set forth here will require extensive modification.

III. Objections and Requests for Hearings Under FFDCA Sections 408 and 409

EPA proposes to add a new 40 CFR Part 178 to inform persons how to submit objections to regulations issued informally under FFDCA section 408 (and 40 CFR Part 180) or FFDCA section 409 (and proposed 40 CFR Part 177), and how to request evidentiary hearings on those objections. Proposed Part 178 also would describe in some detail how EPA would respond to such objections and hearing requests. The new part would implement FFDCA sections 408(d)(5) and 409(f).

To a very large extent, proposed Part 178 (like proposed Part 179, dealing with rules for hearings) is based on the FDA regulations that appear in Subpart B of 21 CFR Part 12 (particularly § 12.20 and §§ 12.22 through 12.30). In issuing and amending those regulations, FDA has explained its reasoning (40 FR 22950, May 27, 1975; 40 FR 40682, September 3, 1975; 41 FR 51706, November 23, 1976; 43 FR 51966, November 7, 1978; 44 FR 22318, April 13, 1979). To the extent that the language in the regulations now proposed by EPA as Parts 178 and 179 is the same as or substantively similar to the FDA regulations, EPA relies on FDA's explanations in support of this proposal and refers readers to them. It should be noted that the FDA regulations upon which this proposed rule is based were part of a larger set of regulations prescribing administrative procedures for all the statutory provisions under which FDA operates, and that the FDA regulations thus are much broader in scope than those proposed here.

In this proposal, EPA has modified or restated a number of the provisions of the FDA regulations. For instance, EPA has reorganized the provisions in an attempt to make quite clear the distinction between objections and hearing requests, and the different actions EPA would take in response to objections alone as opposed to objections accompanied by hearing requests. EPA wishes to emphasize its view that, for purposes of both Agency action and judicial review, persons who file objections to Agency conclusions of law or policy, but who do not disagree with the Agency's characterization of the factual matters involved, need not request an evidentiary hearing in order to obtain review of the objections. Hearings are for the purpose of gathering evidence on disputed factual issues and reaching conclusions on those factual issues; ruling will be issued on objections to regulations whether or not hearing requests are received. If no hearing is requested in connection with an objection, EPA would argue before a reviewing court that its view of the facts should be sustained unless found to be arbitrary or capricious. (The arguably more stringent review standards set forth in FFDCA sections 408(i) and 409(g) are inapplicable, in EPA's opinion, where no evidentiary hearing has been held.) And the standard for review of issues of law or policy should not depend on whether or not an evidentiary hearing was held.

EPA also has attempted in this proposal to make very clear the distinct criteria it will apply in deciding whether an objection has been properly filed, whether a hearing has been properly requested, and whether a hearing request should be granted. For instance, proposed § 178.32 is devoted to criteria for rulings on hearing requests. Such a request would be granted only if the Administrator finds that the request establishes: (1) That there exists one or more genuine and substantial issues of fact; (2) that there is a reasonable possibility that available evidence identified by the requester would, if established, resolve one or more of such issues in favor of the requester, taking into account other evidence to the contrary; and (3) that such resolution of the factual issue(s) in the requestor's favor would justify the action requested in the objection. These proposed rules for deciding whether to hold a hearing are substantially similar to the FDA rules in 21 CFR 12.22 and 12.24. FDA's application of its rules has been upheld in cases such as *Pineapple Growers Ass'n* v. *FDA*, 673 F. 2d 1083 (9th Cir. 1982), and *Community Nutrition Institute* v. *Young*, 773 F. 2d 1356 (D.C. Cir. 1985).

Proposed Part 178 also contains separate sections on what an objection must contain (§ 178.25) and on what a hearing request must contain (§ 178.27).

Proposed § 178.30 gives an overview of the order and manner in which EPA would rule on objections and hearing requests. Paragraphs (c) and (d) on proposed § 178.30 state explicitly that if two or more similar objections are received and one or more of them is accompanied by a valid request for a hearing, those objections would be ruled on as a group after the hearing was held. This provision would avoid the possibility that an issue would undergo review at the same time in an administrative hearing and in a reviewing court. This approach was advanced in the FDA's preamble to the predecessor of the 21 CFR Part 12 regulations. (See 40 FR 22950, 22969 (May 27, 1975).) Proposed § 178.32 includes a provision which directs the Administrator to make preliminary rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

An EPA ruling on an objection in connection with which no evidentiary hearing was held would be issued under § 178.65. Section 178.70 of the proposed rule describes the administrative record of a proceeding that culminates in an order under § 178.65.

If EPA decided that a hearing request should be granted, a hearing would be held and the objection thereafter would be ruled on in a decision, as provided in proposed 40 CFR Part 179 (discussed in Unit IV of this preamble).

IV. Rules Governing Hearings Under FFDCA Sections 408 and 409

EPA proposes to add a new 40 CFR Part 179 to set forth rules of procedure for formal evidentiary hearings under FFDCA section 408(d)(5) or 409(f). EPA also proposes to modify current 40 CFR Part 180 to delete the rules of procedure for section 408(d)(5) hearings that appear in that regulation. Proposed Part 179 is based primarily on FDA's hearing regulations in 21 CFR Part 12, although some of the provisions are derived from 40 CFR Parts 22 and 164.

A hearing would commence with the publication in the **Federal Register** by the Administrator or his designee of a "Notice of Hearing." The principal purposes of such a notice would be to announce that a hearing will be held, specify its scope, and advise persons how and when they must inform the Agency of their intent to participate. The notice of hearing is described in proposed § 179.20. Any person could become a party to the hearing by filing a notice of participation in the manner described by § 179.26. EPA proposes not to make the distinction made in the FDA regulations between "parties" who have a right to cross-examine witnesses and "participants" who may cross-examine witnesses only if allowed to do so by the presiding officer on a showing of good cause. In hearings under FIFRA, EPA has a long-standing policy of freely granting leave to persons to intervene as full parties; EPA has not experienced the difficulties cited by FDA as a reason for limiting the cross-examination rights of some persons (see 41 FR 51706, 51717, November 23, 1976).

The evidence-taking portion of a hearing would be conducted before a presiding officer who would be an administrative law judge. After the evidence has been taken, the presiding

officer would issue an initial decision that would become the Agency's final decision unless a party filed exceptions requesting review by the Administrator, or unless the Administrator undertook review on his or her own volition. The qualifications and powers of the presiding officer, and related matters, are set forth in Subpart D to Part 179.

EPA is proposing to follow the FDA practice (21 CFR 10.55) of providing for full separation of functions between the Agency employees who decide the case and the Agency employees who participate as representatives of the position of the Office of Pesticides and Toxic Substances (OPTS), even though the Administrative Procedure Act, 5 U.S.C. 554(d) and 557(d), does not require this. After the signature of the notice of hearing, therefore, the ban on *ex parte* communications with deciding officials set forth in proposed § 179.24 would apply alike to persons within and without the Agency. Before that time, however, there would be no prohibition on discussions between representatives of the Administrator and representatives of OPTS. Representatives of OPTS could (and ordinarily would) draft the notice of hearing, and the rules would allow the Administrator to decide whether the Assistant Administrator should issue the notice or should refer it to the Administrator for signature.

Proposed § 179.80 sets forth standard provisions regarding filing and service of documents submitted by parties or issued by deciding officials. All such documents would become part of the record of the hearing, in the sense that they would be available for examination by a reviewing court. The documents in the record would not, of course, be "evidence" that could support factual findings in a decision, unless the presiding officer had admitted them as evidence.

The public availability of the record would be governed by § 179.81. In essence, the documents constituting the record of a hearing would be available to the public to the same extent as other Agency documents under the Agency's regulations in 40 CFR Part 2 implementing the Freedom of Information Act. Information covered by a business confidentiality claim would be available to other parties in a hearing or to the public as determined by the presiding officer using the principles set forth in 40 CFR Part 2 for deciding such matters, especially 40 CFR 2.301(g)(3) and 2.301(g)(4). EPA may modify 40 CFR Part 2 to reflect this at the time it issues a final version of Part 179.

Proposed § 179.83 would establish a form of discovery procedure. This section is substantially similar to the FDA regulation at 21 CFR 12.85. It would require each party to submit to the hearing clerk, and thus make available to other parties, all documents in the party's principal files containing factual information, whether favorable or unfavorable to the party's position, that are relevant to the issues in the hearing, unless the documents had already been produced under § 179.83 by another party. Documents that are internal deliberative memoranda, are attorney work product, or were prepared specifically for use in connection with the hearing, would not have to be produced. A party's failure to comply with the document production requirement would allow the presiding officer or the Administrator to draw adverse inferences against the party. OPTS would be required to make its disclosure under this section within 60 days after publication of the notice of hearing (rather than at the time of such publication, as the FDA regulation provides). The OPTS disclosure would include the record of the proceedings that led to the hearing (e.g., the proceedings under Part 178 and under Part 177 or 180). Other parties would be required to make their disclosures 70 days after publication of the notice of hearing. The purpose of this disclosure requirement is to avoid the possibility that the hearing record will fail to include significant evidence known to some parties but not to others. The FFDCA does not specifically provide for the issuance of subpoenas in a hearing under section 408 or 409. Accordingly, it is not clear to EPA that failure to make disclosure as required by the regulation may be the basis for excluding a party from the hearing, although the FDA regulation has so provided for some time. However, it appears to EPA that failure to comply with the disclosure requirement clearly would provide a proper basis for drawing inferences about the nature of the withheld information that are adverse to the party who withheld it. EPA seeks comment on these issues.

EPA also seeks comments on whether the final rule should provide for more expansive, or more explicit discovery rights. The proposed discovery provision in § 179.83 provides that OPTS will provide, within 60 days of the publication of the notice of hearing, all documents in its files containing factual information or expert opinion, whether favorable or unfavorable to the position of OPTS. The other parties have an obligation to provide such information within 70 days of publication of the notice of hearing. The proposal defines files to mean "the principal files" in which documents relating to the issues in the hearing are ordinarily kept. By the use of the term principal files, the Agency does not intend to provide an arbitrary location limitation on the files which must be produced, but rather to indicate that a good faith effort must be made to locate and produce relevant information, without an unduly burdensome search for information of marginal relevance.

The Agency is considering as an alternative a discovery provision modeled after the Federal Rule of Civil Procedure, either with or without a provision for taking depositions. Another possible option is for the Agency to list in the rule the explicit types of discovery information, e.g. toxicity studies, exposure information, benefits data, etc., which must be provided. EPA seeks comment on these discovery options, as well as on whether sanctions different than those included in these procedural rules should be provided for a party's failure to produce discovery documents.

Proposed § 179.86 and § 179.87 would set forth standard provisions for preliminary conferences to be held in advance of the taking of testimony for purposes of simplifying the issues and ordering the presentation of evidence. One or more preliminary conferences may be held at the discretion of the presiding officer. The actions taken at a preliminary conference will be recited in a written order issued by the presiding officer. Sections 179.89 and 179.90 set forth rules governing motions and summary decisions.

Section 179.91 concerns the assignment of burdens in a hearing. The section is based on 40 CFR 164.80 and 21 CFR 12.87(d). The burden of going forward with evidence on an issue in the hearing on that issue. See *Environmental Defense Fund* v. *EPA*, 548 F. 2d 998, 1004, 1013–1015 (DC. Cir. 1976). Thus, for instance, if the Agency had denied a petition for establishment of a new tolerance and the party who had filed the petition objected, that party would have the burden of going forward to present evidence to support its case. Likewise, if the Agency had issued a tolerance and an environmental group objected to its issuance, the environmental group would have the burden of going forward with evidence to make a case for its claims.

The ultimate burden of persuasion that a particular tolerance regulation satisfies the statutory criteria would, however, rest on the party or parties so contending. See *Environmental Defense Fund* v. *United States Dep't of HEW*, 428 U.S. 1083, 1092 (1970); *Continental Chemiste Corp.* v. *Ruckelshaus*, 461 F.

2d 331 (7th Cir. 1972). Thus, in the first example given in the preceding paragraph (where a petitioner for a new tolerance objected to denial of the petition), the ultimate burden of persuasion would rest on the petitioner, the party who sought approval of the tolerance. In the second example (objection by a citizens' group to a tolerance), the ultimate burden of persuasion would rest on OPTS and any other parties who support the issuance or continuation of the tolerance.

Proposed § 179.93 deals with the taking of testimony. It provides that except in those unusual cases where the memory or demeanor of a witness is of importance to the issues in the proceeding, all direct testimony is to be in writing and furnished (with supporting exhibits) to the opposing counsel and the presiding officer two weeks in advance of the time for presentation of the witness. The rule also would provide that oral cross-examination would be the norm. Persons planning to cross-examine the witness by using written exhibits or documents would be obliged to give notice to the other parties 3 business days in advance of the cross-examination. The presiding officer could allow variations in the notice requirements. The purpose of the requirement for written direct testimony and advance notice is to speed the hearing and improve its quality by avoiding surprise, enhancing the ability of parties and their counsel to conduct effective yet terse cross-examination and re-direct examination, and eliminating the time needed for oral recitation of direct testimony and the potential for transcription errors that oral testimony entails. Under the Administrative Procedure Act a party has no right to present direct testimony orally in a rulemaking proceeding unless the party would be "prejudiced" by having to present the testimony in writing. It is hard to conceive of circumstances where prejudice of this sort could result to the party sponsoring the witness in a rulemaking concerning the safety or effectiveness of pesticide chemicals or pesticide residues.

The provisions of the proposed rule regarding transcripts (§ 179.94), admission of evidence, objections, and offers of proof (§ 179.95), conferences (§ 179.97), briefs and arguments (§ 179.98), and interlocutory appeals are largely derived from the 21 CFR Part 12 and 40 CFR Part 164 provisions and, in EPA's opinion, are unlikely to be controversial.

The proposed section (§ 179.105) regarding the initial decision of the presiding officer after evidence-taking has concluded is noteworthy only in that it attempts to make clear that a decision could (and usually would) involve both findings of fact, which must be supported by substantial evidence that has been found admissible, and conclusions of law and policy, which need not be supported by "evidence." Of course, conclusions of law or policy must not be arbitrary or capricious, must take into account the relevant facts and considerations, including the contentions of the parties, and must be explained. EPA also has added a provision that requires a decision to be based upon "a fair evaluation of the entire record," as required by FFDCA section 409(f)(2). FFDCA section 409(g) also specifies that standard for judicial review purposes, but only for issues of fact. While it is not obvious to EPA how the section 409 standard of review differs in substance from the section 408 "substantial evidence when considered on the record as a whole" standard, the legislative history of section 409 contains statements indicating that the "fair evaluation" standard was designed to afford a reviewing court a somewhat broader authority to reverse agency findings of fact than does the "substantial evidence" criterion. To avoid potential controversy, therefore, the "fair evaluation of the record" standard has been included in proposed § 179.105.

The initial decision would become the Agency's final decision unless a timely exception were taken or unless the Administrator decided *sua sponte* to undertake review of the initial decision. This is the practice under 21 CFR Part 12 and 40 CFR Part 164. It is different than the scheme set forth in current 40 CFR Part 180, which makes no provision for a decision or recommended decision by the presiding officer and requires the Administrator to issue all proposed and final decisions.

Finally, the provisions regarding review of the initial decision by the Administrator, issuance of a final decision, judicial review, and the administrative record for review (§§ 179.107 through 179.115, 179.125, and 179.130) again are based primarily on what the Agency believes to be uncontroversial provisions of FDA's hearing regulations in 21 CFR Part 12.

V. Proposed Amendments to Current Tolerance Regulations

In addition to proposing to add to Title 40 three new Parts (177, 178, and 179), EPA proposes to amend Part 180. The amendments would delete from Part 180 current §§ 180.13 through 180.28, which concern objections, requests for hearings, and hearings; the sections would be replaced by the new Parts 178 and 179.

Amendments also would be made to § 180.7 and to § 180.29. In § 180.7, material would be added to state that the Agency could respond to a petition by issuing a proposed rule under FFDCA section 408(e), to state that a final regulation issued in response to a petition could establish, modify, or revoke a tolerance, and to include a provision providing necessary linkage to the proposed new Part 178 regarding objections. In § 180.29, material again would be added to make the section apply to the establishment, modification, or revocation of tolerances, to link the provision to the new Part 178, and to correct certain technical omissions regarding the comment period and the finalization of proposed regulations.

Finally, § 180.30, regarding judicial review, would be rewritten. Paragraph (a) of that section would set forth the Agency's view that judicial review of a regulation issued under Part 180 cannot be obtained until objections have been filed under Part 178 and finally acted upon under Part 178 or 179. Paragraph (b) would state that a denial of a request to the Agency for the initiation of rulemaking under FFDCA section 408(e) is final agency action for which no judicial review provision is made under the FFDCA, but which may be reviewable under some other statutory provision, e.g., 28 U.S.C. 1331.

EPA expects to propose a number of other changes to Part 180 in the course of its second phase of rulemaking, which is discussed in Unit I of this preamble. EPA also may then propose to integrate the procedural provisions of Part 180 with those of Part 177, if that appears to be feasible.

VI. Regulatory Review Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and must submit its analysis supporting its findings to the Office of Management and Budget (OMB) for review. The Agency has determined that the regulations proposed in this document are not "major" regulations as defined by E.O. 12291.

As described in earlier units of this preamble, the regulations proposed by this document are largely procedural in nature and draw heavily from other procedural regulations in closely related areas that members of the regulated community can be expected to be familiar with. By providing procedural regulations in areas where none now exist, the proposal will lessen the

likelihood of costs to the regulated community caused by uncertainty and the potential for delays in handling petitions and objections.

To the extent that the regulations contain substantive provisions, they largely repeat statutory requirements or propose to codify requirements that have been in effect for many years. The one exception is the requirement that a petitioner under section 409 state why the petition should be approved and submit a releasable summary of the petition. A summary of the petition will open the petition process to the public by increasing their understanding of the issues involved and providing the public an opportunity to comment on these issues.

This proposed rule has been reviewed by the Office of Management and Budget (OMB) under section 3 of Executive Order 12291.

B. Regulatory Flexibility Act

This proposed regulatory action has been reviewed under the provisions of section 3(a) of the Regulatory Flexibility Act and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations.

As this proposed regulatory action is intended to formalize procedures and criteria specified in the statute itself, it is anticipated that little or no economic impact will occur on any small entity.

Accordingly, I certify that this proposed regulatory action does not require a separate regulatory analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

The information collection requirements related to current submissions of petitions under FFDCA section 409 have been approved by OMB under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and have been assigned OMB Control No. 2070–0024. These existing information collection requirements would be reduced by this proposed rule, when promulgated, and have been submitted to OMB under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* Comments on the modifications to existing information collection requirements should be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked Attention: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

Reduction in public reporting burden for this collection of information as a result of this amendment is expected to average approximately 14 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 177, 178, 179, 180

Administrative practice and procedure, Agricultural commodities, Processed foods, Pesticides and pests, Objections, Hearings, Reporting and recordkeeping requirements.

Dated: October 7, 1988.

Lee M. Thomas,

Administrator.

For the reasons stated in the preamble, it is proposed to amend Chapter I of Title 40, Code of Federal Regulations, as follows:

1. By adding a new Part 177, to read as follows:

PART 177—ISSUANCE OF FOOD ADDITIVE REGULATIONS

Subpart A—General Provisions

Sec.

177.1 Scope and applicability.
177.3 Definitions.

Subparts B–D—[Reserved]

Subpart E—Procedures for Filing Petitions

177.81 Petition for establishment, modification, or revocation of a food additive regulation.
177.84 Deficient or incomplete petition.
177.86 Acceptance for review.
177.88 Publication of notice.
177.92 Amendments or supplements to petitions.
177.98 Withdrawal of petitions.

Subpart F—Submission of Scientific and Technical Information

177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.
177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.
177.110 Additional data requirements; waiver of requirements.
177.116 Sample of food additive.

Subpart G—Administrative Actions

177.125 Action after review.
177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.
177.135 Effective date of regulation.

Subpart H—Judicial Review

177.140 Judicial review.

Authority: 21 U.S.C. 348, 371(a); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 177.1 Scope and applicability.

(a) This part establishes procedures for the establishment, modification, or revocation by the Administrator of food additive regulations under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 348, for food additives the use of which may result in pesticide residues in or on processed food or otherwise affect the characteristics of such food.

(b) Part 178 of this chapter contains procedures for filing objections and requests for hearings under FFDCA section 409(f) on food additive regulations or petition denials issued under this part. Part 179 of this chapter contains rules governing formal evidentiary hearings under FFDCA section 409(f).

(c) Regulations establishing tolerances (or exemptions from the need for a tolerance) for pesticide residues on raw agricultural commodities under FFDCA section 408 are set forth in Part 180 of this chapter. If the use of a pesticide chemical in the production, storage, or transportation of a raw agricultural commodity (RAC) in conformity with such a tolerance or exemption results in the presence of a pesticide residue in or on processed food made from the RAC, FFDCA section 402(a)(2)(C) provides that such pesticide residue shall not be deemed unsafe for the purposes of FFDCA section 409 (despite the absence of a food additive regulation regarding such residue on the processed food) if the residue in or on the RAC has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed food when ready to eat is not greater than the tolerance prescribed for the RAC. However, a food additive regulation would be required if the level of the pesticide residue in the processed food when ready to eat exceeded the

level permitted in the "parent" RAC by the tolerance established under FFDCA section 408. In addition, if a pesticide residue in or on a processed food results from the application of a pesticide during or after processing, the food would be unsafe within the meaning of FFDCA section 409 unless a food additive regulation permitted that residue in or on the processed food.

§ 177.3 Definitions

For the purposes of this part:

"Administrator" means the Administrator of the Agency, or an officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

"Agency" means the United States Environmental Protection Agency.

"FFDCA" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136–136y.

"Food additive" means any substance the intended use of which results or may reasonably be expected to result, directly or indirectly, in its becoming a component of or otherwise affecting the characteristics of any food (including any such substance intended for use in producing, manufacturing, packing, processing, preparing, treating, packaging, transporting, or holding food), except that such term does not include:

(1) A pesticide chemical in or on raw agricultural commodity.

(2) A pesticide chemical to the extent that it is intended for use or is used in the production, storage, or transportation of any raw agricultural commodity.

(3) A color additive.

(4) Any substance used in accordance with a sanction or approval granted prior to September 6, 1958, pursuant to the FFDCA, the Poultry Products Inspection Act, or the Federal Meat Inspection Act.

(5) A new animal drug.

(6) A substance that is generally recognized, among experts qualified by scientific training and experience to evaluate its safety, as having been adequately shown through scientific procedures (or, in the case of a substance used in food prior to January 1, 1958, through either scientific procedures or experience based on common use in food) to be safe under the conditions of its intended use.

"Food additive regulation" means a regulation issued pursuant to FFDCA section 409 that states the conditions under which a food additive may be safely used. A food additive regulation under this part ordinarily establishes a tolerance for pesticide residues in or on a particular processed food or a group of such foods. It may also specify: The particular food or classes of food in or on which a food additive may be used; the maximum quantity of the food additive which may be used in or on such food; the manner in which the food additive may be added to or used in or on such food; or directions or other labeling or packaging requirements for the food additive.

"Pesticide chemical" means any substance which alone, or in chemical combination with or in formulation with one or more other substances, is a "pesticide" within the meaning of FIFRA and which is used in the production, storage, or transportation of any raw agricultural commodity. The term includes any substance that is an active ingredient, intentionally-added inert ingredient, or impurity of such a "pesticide."

"Pesticide residue" means a residue of a pesticide chemical or of any metabolite or degradation product of a pesticide chemical.

"Tolerance" means:

(1) The amount of a pesticide residue that legally may be present in or on a processed food under the terms of a food additive regulation. Tolerances are usually expressed in terms of parts of the pesticide residue per million parts of the processed food (ppm), by weight.

(2) [Reserved]

Subparts B–D—[Reserved]

Subpart E—Procedures for Filing Petitions

§ 177.81 Petition for establishment, modification, or revocation of a food additive regulation.

(a) *Who may submit a petition.* Any person may submit a petition requesting the Agency to issue a regulation to establish, modify, or revoke a food additive regulation.

(b) *Where to submit petition.* A petition shall be submitted to:

Registration Division (TS–767C), Office of Pesticide Programs, U.S. Environmental Protection Agency, Washington, DC 20460.

(c) *Identification of petitioner.* A petition must be signed by the petitioner or the petitioner's authorized representative, and state the petitioner's mailing address and telephone number.

(d) *Material to be in English language.* The petition shall be written in the English language. If any part of the accompanying material is written in a language other than English, it shall be accompanied by an accurate and complete English translation.

(e) *Format for data submission.* Data and information submitted in support of a petition shall be on separate sheets or sets of sheets, suitably identified. If an item of data has already been submitted to the Agency, the petitioner may cite it rather than submitting it. The data shall be submitted in the manner specified by §158.32 of this chapter. Any claim of entitlement to confidential treatment of data shall be made in accordance with § 158.33 of this chapter.

§ 177.84 Deficient or incomplete petition.

(a) After a preliminary review of the petition, the Administrator may notify the petitioner that the Agency has found the petition to be incomplete or deficient, i.e., that it does not comply with the requirements of § 177.102 or § 177.105, and that it will not be accepted for detailed review.

(b) A petitioner who receives a notice under paragraph (a) of this section may supplement the petition, in which case the Agency shall conduct a further preliminary review of the petition as supplemented and take action under paragraph (a) of this section or under § 177.86.

§ 177.86 Acceptance for review.

Unless the Administrator notifies the petitioner under § 177.84 that the petitioner is incomplete or deficient, the Administrator shall accept the petition for detailed review.

§ 177.88 Publication of notice.

Within 30 days of acceptance of a petition for detailed review, the Administrator shall publish in the **Federal Register** a notice which includes the name of the petitioner and the summary submitted in accordance with § 177.102(i).

§ 177.92 Amendments or supplements to petitions.

After a notice of a petition has been published, the petitioner may submit additional information or data in support of the petition, or may amend the petition. Any such submission or amendment shall be accompanied by an informative summary of its contents that may be published in the **Federal Register**. The Administrator shall publish a notice in the **Federal Register** to supplement the notice published under § 177.88 if:

(a) The petitioner seeks to amend the petition by increasing a requested tolerance, by identifying any additional food additive or additional pesticide residues to which the requested food additive regulations would apply, by

identifying any additional processed food to which the requested food additive regulations would apply, or by changing the method for detecting or measuring pesticide residues to be used for enforcement purposes.

(b) The Administrator finds that publication of such a notice otherwise would be in the public interest.

§ 177.98 Withdrawal of petitions.

A petitioner may withdraw a petition. The Agency may retain a copy of a withdrawn petition and any supporting date and information.

Subpart F—Submissions of Scientific and Technical Information

§ 177.102 Data and information required to support petition to establish a food additive regulation, to increase a tolerance, or to remove a condition on use.

A petition to establish a food additive regulation, or to modify a food additive regulation by increasing a tolerance for a pesticide residue in or on a processed food or by removing any other condition of use of a food additive, shall include the following data and information.

(a)(1) The name and composition of the food additive that is a subject of the petition, and the chemical composition of each component of the food additive:

(2) The name, chemical identity, and composition of each pesticide residue that is a subject of the petition; and

(3) The identity of the processed food(s) in question.

(b) A statement of any conditions of use proposed for the food additive, including all directions, recommendations, and suggestions proposed regarding the use of the food additive, i.e., the amount, frequency, method, and time of application or other use, and a copy of its proposed labeling.

(c) Full reports of investigations made with respect to the toxicity of the food additive and of its safety for the proposed rule, including full information as to the methods and controls used in conducting such investigations.

(d) The results of tests to determine the identity and amount of pesticide residues in or on the processed food resulting from the proposed use of the food additive, including a description of the analytical methods used, and a description of practicable methods for measuring such pesticide residues.

(e) Full reports of investigations made with respect to the toxicity of such pesticide residues, including full information as to the methods and controls used in conducting such investigations.

(f) All relevant data bearing on the physical or other technical effect such food additive is intended to produce, and the quantity of such food additive required to produce such effect.

(g) The terms of each food additive regulation proposed.

(h) A statement of why, in the petitioner's opinion, it would be reasonable for the Administrator to approve the petition, taking into account the terms of the FFDCA and FIFRA, this part, the petition, the data and information submitted or cited in support of the petition, other information available to the Agency, and any information or argument reasonably likely to be advanced in opposition to approval of the petition.

(i) An informative summary of the petition and of the data, information, and arguments submitted or cited in support of the petition, and a statement that the petitioner agrees that such summary or any information it contains may be published as a part of the notice to to furnished to the public under § 177.88 or as part of a proposal under § 177.130. The summary need not refer to any method or process that is entitled to protection as a trade secret under FFDCA section 301(j).

§ 177.105 Data and information required to support petition to revoke a food additive regulation, to decrease a tolerance, or to add a condition on use.

A petition to revoke a food additive regulation, or to modify such a regulation by decreasing a tolerance for a pesticide residue in or on a processed food or by adding a condition on the use of a food additive, shall include:

(a) The data information required by § 177.102(a), (b), (g), (h), and (i).

(b) Such data and information of the types described in § 177.102(c), (d), (e), and (f) as the petitioner chooses to submit.

(c) Information showing what changes, if any, petitioner believes would have to be made in associated registrations of pesticides under FIFRA or in associated tolerance regulations issued under FFDCA section 408 if the petition were granted.

§ 177.110 Additional data requirements; waiver of requirements.

(a) The Administrator may require a petitioner to submit data or information other than that described by this part if the Administrator finds such data or information to be necessary for the evaluation of the petition.

(b) The Administrator may waive a requirement imposed by this part for the submission of data or information if the Administrator finds such data or information to be unnecessary for the evaluation of the petition.

§ 177.116 Sample of food additive.

The Agency may require the petitioner to submit a sample of the food additive or pesticide residue that is a subject of the petition. The Agency shall specify in such request the quantity which it requires.

Subpart G—Administrative Actions

§ 177.125 Action after review.

(a) After a petition has been accepted for detailed review, the Administrator shall review the petition, the accompanying data and information, and other pertinent data or information available to the Administrator.

(b) Upon completion of such review, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a food additive regulation (whether or not in accord with the action proposed by the petitioner), whether to issue an order denying the petition, or whether to publish a proposed food additive regulation and request public comment thereon under § 177.130.

(c) The Administrator shall publish in the **Federal Register** such order or proposed regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under Part 178 of this chapter.

§ 177.130 Issuance of proposed rule on Administrator's initiative or in response to petition, and final action on proposal.

(a) The Administrator may publish in the **Federal Register** a proposal to establish a food additive regulation or to modify or revoke an existing food additive regulation, on his own initiative or in response to a petition.

(b) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(c) After reviewing any timely comments made, the Administrator may by order establish, modify, or revoke a food additive regulation, or may by order decide that no final action on the proposal is warranted. Each such order and each such regulation shall be published in the **Federal Register**. An order published under this section shall state that objections and requests for a hearing may be filed as prescribed by Part 178 of this chapter.

§ 177.135 Effective date of regulation.

Any final regulation issued under § 177.125 or § 177.130 shall be effective on the date of publication in the **Federal Register**. The Administrator, in his or her sole discretion, may stay the

effective date of the regulation if an adversely affected person files an objection under Part 178 of this chapter.

Subpart H—Judicial Review

§ 177.140 Judicial review.

The FFDCA does not provide for judicial review of an order or regulation issued under this part or of a denial of a petition under this part. However, if an objection to such action is submitted to the Administrator in the manner prescribed by Part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objection. (See FFDCA sections 409 (f) and (g).)

2. By adding new Part 178 to read as follows:

PART 178—OBJECTIONS AND REQUESTS FOR HEARING

Subpart A—General Provisions

Sec.
178.3 Definitions.

Subpart B—Procedures for Filing Objections and Requests for Hearing

178.20 Right to submit objections and requests for hearing.
178.25 Form and manner of submission of objections.
178.27 Form and manner of submission of request for evidentiary hearing.
178.30 Response by Administrator to objections and to requests for hearing.
178.32 Rulings on requests for hearings.
178.35 Modification or revocation of regulation.
178.37 Order responding to objections on which a hearing was not requested or was denied.

Subpart C—[Reserved]

Subpart D—Judicial Review

178.65 Judicial review.
178.70 Administrative record.

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 178.3 Definitions.

For the purposes of this part:

"Administrator" means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator delegates the authority to perform functions under this part.

"Agency" means the United States Environmental Protection Agency.

"Assistant Administrator" means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of the Agency's Office of Pesticides and Toxic Substances to whom the Assistant Administrator delegates the authority to perform functions under this part.

"FFDCA" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

Subpart B—Procedures for Filing Objections and Requests for Hearing

§ 178.20 Right to submit objections and requests for hearing.

(a) On or before the 30th day after the date of publication of an order under Part 177 or Part 180 of this chapter establishing, modifying, or revoking a regulation or an order under Part 177 of this chapter denying all or any portion of a petition, a person may submit one or more written objections to the order (or to the action that is the subject of the order). Section 178.25 describes how to submit an objection.

(b) A person may include with any such objection a written request for an evidentiary hearing on such objection. Section 178.27 describes how to submit a request for a hearing.

(c) A person who submits objections need not request a hearing. For instance, if the person's objections are of a purely legal or policy nature, a hearing request would be inappropriate; the purpose of an evidentiary hearing is to resolve factual disputes. The Administrator will rule on the objections whether or not a hearing is requested.

(d) As a matter of discretion, the Administrator may order a hearing on an objection even though no person has requested a hearing.

§ 178.25 Form and manner of submission of objections.

(a) To be considered by the Administrator, an objection must:

(1) Be in writing.

(2) Specify with particularity the provision(s) of the order, regulation, or denial objected to, the basis for the objection(s), and the relief sought.

(3) Be signed by the objector.

(4) State the objector's name and mailing address.

(5) Be accompanied by the fee prescribed by § 180.33(i) of this chapter, if the objection is to an order or regulation issued under Part 180 of this chapter.

(6) Be submitted to the hearing clerk.

(7) Be received by the hearing clerk not later than the close of business of the 30th day following the date of the publication in the **Federal Register** of the order to which the objection is taken (or, if such 30th day is a Saturday, Sunday, or Federal holiday, not later than the close of business of the next government business day after such 30th day).

(b) Submissions to the hearing clerk shall be made as follows:

(1) Mailed submissions should be addressed to:

Office of the Hearing Clerk (A–110),
U.S. Environmental Protection Agency,
401 M Street, SW.,
Washington, DC 20460.

(2) For personal delivery, the Office of the Hearing Clerk is located at:

Room M3708,
Waterside Mall,
401 M Street, SW.,
Washington, DC.

§ 178.27 Form and manner of submission of request for evidentiary hearing.

(a) To be considered by the Administrator, a request for an evidentiary hearing must:

(1) Be submitted as a part of, and specifically request an evidentiary hearing on, an objection that complies with the requirements of § 178.25.

(2) Include a statement of the federal issue(s) on which a hearing is requested and the requestor's contentions on each such issue.

(3) Include a copy of any report, article, survey, or other written document (or the pertinent pages thereof) upon which the objector relies to justify an evidentiary hearing, unless the document is an EPA document that is routinely available to any member of the public.

(4) Include a summary of any evidence not described in paragraph (a)(3) of this section upon which the objector relies to justify an evidentiary hearing.

(5) Include a discussion of the relationship between the factual issues and the relief requested by the objection.

(b) The criteria that must be met to justify an evidentiary hearing on an objection are set forth in § 178.32.

§ 178.30 Response by Administrator to objections and to requests for hearing.

The Administrator will respond to objections, and to requests for a hearing on such objections, as set forth in this section.

(a) *Denial of objections that are improperly submitted or that seek an unavailable form of relief.* The Administrator will by order issued under § 178.37 deny each objection and each request for a hearing that is included with such an objection, if:

(1) The objection is found not to conform to § 178.25.

(2) The action requested by the objection is inconsistent with any provision of FFDCA.

(3) The action requested by the objection is inconsistent with any generic, e.g. non-chemical specific,

interpretation of a provision of FFDCA in any regulation in this chapter (the proper procedure in such a case is for the person to petition for an amendment of the regulation involved).

(b) *Denial of improperly submitted requests for hearing.* The Administrator will then determine whether any objection that has not been denied under paragraph (a) of this section was accompanied by a request for an evidentiary hearing that conforms to § 178.27. The Administrator will deny under § 178.37 each request that does not conform to § 178.27.

(c) *Grouping of certain related objections.* If the Administrator then finds:

(1) That two or more undenied objections are substantially similar, or are related in such a way that any judicial review of the Administrator's action on those objections should occur at the same time, and

(2) That one or more of those objections was accompanied by an undenied request for an evidentiary hearing on that objection, the Administrator will treat those objections as a group and will rule on them only after ruling under § 178.32 on the associated request for hearing.

(d) *Rulings on objections for which a request for hearing has been granted.* If the Administrator rules under § 178.32 that an evidentiary hearing should be held on an objection, the Administrator will rule on the objection (and on any other objection grouped with it under paragraph (c) of this section) under §§ 179.105 through 179.112 of this chapter after an evidentiary hearing has been held.

(e) *Rulings on objections for which no request for hearing was received, or for which each request for hearing was denied.* Except as provided in paragraphs (c) and (d) of this section, if no hearing was requested on an objection, or if each such request that was made must be denied under the criteria of paragraph (a) or (b) of this section or § 178.32(b), the Administrator will rule on the objection under § 178.37.

§ 178.32 Rulings on requests for hearing.

(a) In the case of each request for an evidentiary hearing that was not denied under § 178.30 (a) or (b), the Administrator will determine whether such a hearing on one or more of the objections is justified, and will publish the determination in an order issued under § 178.37 or a notice of hearing issued under § 179.20. If some requests for a hearing are denied and others pertaining to the same order or regulation are granted, the denial order and the hearing notice shall be issued at the same time and may be combined into a single document.

(b) A request for an evidentiary hearing will be granted if the Administrator determines that the material submitted shows the following:

(1) There is a genuine and substantial issue of fact for resolution at a hearing. An evidentiary hearing will not be granted on issues of policy or law.

(2) There is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested evidence to the contrary. An evidentiary hearing will not be granted on the basis of mere allegations, denials, or general descriptions of positions and contentions, nor if the Administrator concludes that the data and information submitted, even if accurate, would be insufficient to justify the factual determination urged.

(3) Resolution of the factual issue(s) in the manner sought by the person requesting the hearing would be adequate to justify the action requested. An evidentiary hearing will not be granted on factual issues that are not determinative with respect to the action requested. For example, a hearing will not be granted if the Administrator concludes that the action would be the same even if the factual issue were resolved in the manner sought.

(4) Where appropriate, the Administrator will make preliminary rulings on any issues raised by an objection which are necessary for resolution prior to determining whether a request for an evidentiary hearing should be granted.

§ 178.35 Modification or revocation or regulation.

(a) If the Administrator determines upon review of an objection or request for hearing that the regulation in question should be modified or revoked, the Administrator will by order publish appropriate rulemaking documents in the **Federal Register**.

(b) Objections to the modification or revocation of the regulation, and requests for a hearing on such objections, may be submitted under §§ 178.20 through 178.27.

(c) Objections and requests for hearing that are not affected by the modification or revocation will remain on file and be acted upon in accordance with this part.

§ 178.37 Order responding to objections on which a hearing was not requested or was denied.

(a) The Administrator will publish in the **Federal Register** an order under FFDCA section 408(d)(5) or 409(f)(1) setting forth the Administrator's determination on each denial of a request for a hearing, and on each objection submitted under § 178.20 on which:

(1) A hearing was not requested.

(2) A hearing was requested, but denied.

(b) Each order published under paragraph (a) of this section must state the reasons for the Administrator's determination. If the order denies a request for a hearing on the objection, the order must state the reason for that denial (e.g., why the request for a hearing did not conform to § 178.27, or why the request was denied under § 178.32).

(c) Each order published under paragraph (a) of this section must state its effective date, which must not be earlier than the 90th day after the order is published unless the order contains the Administrator's findings as to the existence of emergency conditions that necessitate an earlier effective date.

Subpart C—[Reserved]

Subpart D—Judicial Review

§ 178.65 Judicial review.

An order issued under § 178.37 is final agency action reviewable in the courts as provided by FFDCA sections 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

§ 178.70 Administrative record.

(a) For purposes of judicial review, the record of an administrative proceeding that culminates in an order under § 178.37 consists of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) Any regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the regulation that was the subject of that order, and each related notice of proposed rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) Any final regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the final regulation that was the subject of that order, and each related notice of proposed rulemaking.

(6) Any comments submitted by members of the public in response to the notice of filing or notice of proposed rulemaking, and any data or information submitted as part of the comments.

(7) All other documents or information submitted to the docket for the rulemaking in question.

(8) The order issued under § 178.37.

(b) The record will be closed as of the date of the Administrator's decision unless another date for closing of the record is specified in the order issued under § 178.37.

3. By adding new Part 179 to read as follows:

PART 179—FORMAL EVIDENTIARY PUBLIC HEARING

Subpart A—General Provisions

Sec.

179.3 Definitions.
179.5 Other authority.

Subpart B—Initiation of Hearing

179.20 Notice of hearing.
179.24 Ex parte discussions; separation of functions.

Subpart C—Participation and Appearance; Conduct

179.42 Notice of participation.
179.45 Appearance.
179.50 Conduct at oral hearings or conferences.

Subpart D—Presiding Officer

179.60 Designation and qualifications of presiding officer.
179.70 Authority of presiding officer.
179.75 Disqualification of deciding officials.
179.78 Unavailability of presiding officer.

Subpart E—Hearing Procedures

179.80 Filing and service.
179.81 Availability of documents.
179.83 Disclosure of data and information.
179.85 Purpose of preliminary conference.
179.86 Time and place of preliminary conference.
179.87 Procedures for preliminary conference.
179.89 Motions.
179.90 Summary decisions.
179.91 Burden of going forward; burden of persuasion.
179.93 Testimony.
179.94 Transcripts.
179.95 Admission or exclusion of evidence; objections; offers of proof.
179.97 Conferences during hearing.
179.98 Briefs and arguments.

Subpart F—Decisions and Appeals

179.101 Interlocutory appeal from ruling of presiding officer.
179.105 Initial decision.
179.107 Appeal from or review of initial decision.
179.110 Determination by Administrator to review initial decision.
179.112 Decision by Administrator on appeal or review of initial decision.
179.115 Motion to reconsider final order.
179.117 Designation and powers of judicial officer.

Subpart G—Judicial Review

179.125 Judicial review.
179.130 Administrative record.

Authority: 21 U.S.C. 346a, 348, 371(a); Reorg. Plan No. 3 of 1970.

Subpart A—General Provisions

§ 179.3 Definitions.

"Administrator" means the Administrator of the Agency, or any officer or employee of the Agency to whom the Administrator has delegated the authority to perform functions under this part.

"Agency" means the United States Environmental Protection Agency.

"Assistant Administrator" means the Agency's Assistant Administrator for Pesticides and Toxic Substances, or any officer or employee of OPTS to whom the Assistant Administrator has delegated the authority to perform functions under this part.

"FFDCA" means the Federal Food, Drug, and Cosmetic Act, as amended, 21 U.S.C. 301–392.

"FIFRA" means the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136–136y.

"Judicial Officer" means a person who has been designated by the Administrator under § 179.115 to serve as a judicial officer.

"Office of the Administrator" means the Agency's Administrator and Deputy Administrator and their immediate staff, including the judicial officer.

"OPTS" means the Agency's Office of Pesticides and Toxic Substances.

§ 179.5 Other authority.

Questions regarding procedural matters arising under this part or Part 178 of this chapter that are not addressed by this part or Part 178 of this chapter shall be resolved by the Administrator or presiding officer, as appropriate.

Subpart B—Initiation of Hearing

§ 179.20 Notice of hearing.

(a) If the Administrator determines under § 178.32 of this chapter that a hearing is justified on any issue, the Administrator will file with the hearing clerk and publish in the **Federal Register** a notice of hearing. The notice of hearing will set forth:

(1) The docket number for the hearing.

(2) Each order, regulation, or petition denial that is the subject of the hearing, and a statement specifying any part of any such regulation or order that has been stayed in the Administrator's discretion.

(3) The identity of each person whose request for a hearing has been granted, and of any other person whose petition under § 177.81 or § 180.7 of this chapter occasioned the order that the hearing concerns.

(4) A statement of the issues of fact on which a hearing has been found to be justified.

(5) A statement of the objections whose resolution depends on the resolution of those issues of fact.

(6) A statement that the presiding officer will be designated by the Chief Administrative Law Judge.

(7) The time within which notices of participation should be filed under § 179.26.

(8) The date, time, and place of the preliminary conference, or a statement that the date, time, and place will be announced in a later notice.

(9) The time within which parties must submit written information and views under § 179.83.

(10) Designations with respect to separation of functions published under § 179.24(b)(2).

(b) The statement of the issues of fact on which a hearing has been justified determines the scope of the hearing and the matters on which evidence may be introduced. The issues may be revised by the presiding officer. A party may obtain interlocutory review by the Administrator of a decision by the presiding officer to revise the issues to include an issue on which the Administrator has not granted a request for a hearing or to eliminate an issue on which a request for a hearing has been granted.

(c) A hearing is deemed to begin on the date of publication of the notice of hearing.

§ 179.24 Ex parte discussions; separation of functions.

(a) Any person may meet or correspond with any officer or employee of the Agency concerning a matter under Parts 177, 178, or 180 of this chapter prior to publication of a notice of hearing under § 179.20.

(b) Upon publication of a notice of hearing, the following separation of function rules apply:

(1) OPTS, as a party to the hearing, is responsible for presentation of its position at the hearing and in any pleading or oral argument before the Administrator. The Pesticides and Toxic Substances Division of the Office of General Counsel shall advise and represent OPTS with respect to the hearing and in any pleading or oral argument before the Administrator. An employee or other representatives of OPTS may not participate in or advise the Administrator or any of his representatives on any decision under this part, other than as witness or counsel in public proceedings, except as provided by paragraph (b)(2) of this section. There is to be no other communication between representatives of OPTS and the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing until after issuance of the decision of the Administrator.

(2) The Administrator may designate persons who otherwise would be regarded as representatives of OPTS, to serve as representatives of the Office of the Administrator on matters pertaining to the hearing, and may also designate persons who otherwise would be regarded as representatives of the Office of the Administrator to serve as representatives of OPTS. Such designations will be included in the notice of hearing published under § 179.20.

(3) The Office of the Administrator is responsible for the final decision of the matter, with the advice and participation of anyone in the Agency other than representatives of OPTS.

(c) Between the date of publication of the notice of hearing and the date of the Administrator's final decision on the matter, communication concerning the matter involved in the hearing will be restricted as follows:

(1) No person outside the Agency may have an *ex parte* communication with the presiding officer or any representative of the Office of the Administrator concerning the merits of the hearing. Neither the presiding officer nor any representative of the Office of the Administrator may have any *ex parte* communication with a person outside the Agency concerning the merits of the hearing.

(2) A written communication contrary to this section must be immediately served on all other participants and filed with the hearing clerk by the presiding officer at the hearing, or by the Administrator, depending on who received the communication. An oral communication contrary to this section must be immediately recorded in a written memorandum and similarly served on all other parties and filed with the hearing clerk. A person, including a representative of a party in the hearing, who is involved in an oral communication contrary to this section, must, if possible, be made available for cross-examination during the hearing with respect to the substance of that communication. Rebuttal testimony pertinent to a written or oral communication contrary to this section will be permitted.

(d) The prohibitions specified in paragraph (c) of this section also apply to a person who, in advance of the publication of a notice of hearing, knows that the notice has been signed. The prohibitions become applicable to such a person as of the time the knowledge is acquired.

(e) The making of a communication contrary to this section may, consistent with the interests of justice and the policies underlying the FFDCA, result in a decision adverse to the person knowingly making or causing the making of the communication.

Subpart C—Participation and Appearance; Conduct

§ 179.42 Notice of participation.

(a) OPTS shall be a party to a hearing under this part. Any other person may participate as a party in such a hearing to the extent specified by this section.

(b) A person desiring to participate in a hearing must file with the hearing clerk within 30 days after publication of the notice of hearing under § 179.20, a notice of participation in the following form:

Notice of Participation

Docket No. ———— ————

Under 40 CFR Part 179, please enter the participation of:
(Name) ————
(Street address) ————
(City and State) ————
(Telephone number) ————

Service on the above will be accepted by:
(Name) ————
(Street address) ————
(City and State) ————
(Telephone number) ————
Signed: ————
Date: ————

(c) An amendment to a notice of participation must be filed with the hearing clerk and served on all parties.

(d) No person may participate in a hearing who has not filed a written notice of participation or whose participation has been stricken under paragraph (f) of this section.

(e) The presiding officer may permit the late filing of a notice of participation upon a showing of good cause. Arrangements and agreements previously made in the proceeding shall apply to any party admitted late.

(f) The presiding officer may strike the participation of a person for failure to comply with any requirement of this subpart. Any person whose participation is striken may obtain interlocutory review thereof by the Administrator.

§ 179.45 Appearance.

(a) A party to a hearing may appear in person or by counsel or other representative in the hearing.

(b) The presiding officer may strike a person's right to appear in the hearing for violation of the rules of conduct in § 179.50.

§ 179.50 Conduct at oral hearings or conferences.

The parties and their representatives must conduct themselves with dignity and observe the same standards of practice and ethics that would be required of parties in a judicial proceeding. Disrespectful, disorderly, or contumacious language or conduct, refusal to comply with directions, use of dilatory tactics, or refusal to adhere to reasonable standards of orderly and ethical conduct during any hearing constitute grounds for immediate exclusion from the proceeding by the presiding officer.

Subpart D—Presiding Officer

§ 179.60 Designation and qualifications of presiding officer.

The presiding officer in a hearing will be an administrative law judge qualified under 5 U.S.C. 3105 and designated by the Agency's Chief Administrative Law Judge.

§ 179.70 Authority of presiding officer

The presiding officer shall conduct the hearing in a fair and impartial manner subject to the precepts of the Canons of Judicial Ethics of the American Bar Association. The presiding officer has all powers necessary to conduct a fair, expeditious, and orderly hearing, including the power to:

(a) Specify and change the date, time, and place for conferences and oral

presentations, and issue and modify a schedule for the hearing.

(b) Establish the procedures for use in developing evidentiary facts.

(c) Prepare statements of the areas of factual disagreement among the participants.

(d) Hold conferences to settle, simplify, or determine the issues in a hearing or to consider other matters that may expedite the hearing.

(e) Administer oaths and affirmations.

(f) Control the course of the hearing and the conduct of the participants.

(g) Examine witnesses and strike their testimony if they fail to respond fully to proper questions.

(h) Rule on, admit, exclude, or limit evidence.

(i) Set the time for filing pleadings.

(j) Rule on motions and other procedural matters.

(k) Rule on motions for summary decision under § 179.90.

(l) Conduct the hearing in stages if the number of parties is large or the issues are numerous and complex.

(m) Waive, suspend, or modify any rule in this subpart if the presiding officer determines that no party will be prejudiced, the ends of justice will be served, and the action is in accordance with law.

(n) Strike the participation of any person under § 179.26(e), or exclude any person from the hearing under § 179.50, or take other reasonable disciplinary action.

(o) Take any other action for the fair, expeditious, and orderly conduct of the hearing.

§ 179.75 Disqualification of deciding officials.

(a) A deciding official in a hearing under this part (including, e.g., the Administrator, judicial officer, or presiding officer) shall not decide any matter in connection with which he or she has a financial interest in any of the parties, or a relationship that would make it otherwise inappropriate for him or her to act.

(b) A party may request that a deciding official disqualify himself/herself and withdraw from the proceeding. The party may obtain interlocutory review by the Administrator of a denial of such a request made to any deciding official other than the Administrator.

(c) A deciding official who is aware of grounds for disqualification shall withdraw from the proceeding.

§ 179.78 Unavailability of presiding officer.

If the presiding officer is unable to act for any reason, his or her powers with respect to the hearing will be assigned by the Chief Administrative Law Judge to another presiding officer. The substitution will not affect the hearing, i.e., the testimony of the witnesses will not be taken anew except as the new presiding officer may order upon the request of a party where the credibility of a witness is of particular importance.

Subpart E—Hearing Procedures

§ 179.80 Filing and service.

(a) All documents required or authorized to be filed by a party to a hearing under this part regarding any matter to be decided by the presiding officer, the judicial officer, or the Administrator shall be filed in duplicate with the hearing clerk, in the manner specified by § 178.25(b) of this chapter. Each filing shall prominently note the docket number. To determine compliance with deadlines in a hearing, a document is considered filed on the date it is actually received by the hearing clerk. When this part allows a response by a party to a submission and prescribes a period of time for the filing of the response, an additional 3 days are allowed for the filing of the response if the submission is served by mail.

(b) Each notice, order, decision, or other document issued under this part by the presiding officer, the judicial officer, or the Administrator shall be filed with the hearing clerk. The hearing clerk shall immediately serve all pareties with a copy of such order, decision, or other document.

(c) At the same time that a party files any document with the hearing clerk, the party shall serve a copy thereof on each other party, unless the presiding officer specifies otherwise. Each filing shall be accompanied by a certificate of service, or a statement that service is not required. Service on a party is accomplished by mailing a submission to the address shown in the notice of participation or by personal delivery.

(d) The presiding officer may grant an extension of time for the filing of any pleading, document, or motion

(1) Upon timely motion by a party, for good cause shown, and after consideration of prejudice to other parties, or

(2) Upon the presiding officer's own motion.

(e) A motion by a party for an extension may only be made after notice to all other parties, unless the movant can show good cause why such notice is impracticable. The motion shall be filed in advance of the date on which the pleading, document, or motion is due to be filed, unless the failure of the party to make a timely motion for an extension was the result of excusable neglect.

§ 179.81 Availability of documents

(a) All orders, decisions, pleadings, transcripts, exhibits, and other docket entries shall become part of the official docket and shall be retained by the hearing clerk. Except as otherwise provided by paragraph (b) of this section or Part 2 of this chapter, all documents that are a part of the official docket shall be made available to the public for reasonable inspection during Agency business hours. Copies of such documents may be obtained by members of the public as provided in Part 2 of this chapter.

(b) Whenever any information or data are required to be produced or examined in a hearing and any party makes a business confidentiality claim regarding such information under Part 2 of this chapter, the availability of such information to the other parties or to the public shall be determined by the presiding officer. The presiding officer shall make such determinations in accordance with Part 2 of this chapter, including specifically the procedures and principles set forth in § 2.301(g) (3) and (4) of this chapter. The presiding officer shall take such steps as are necessary for the protection of information entitled to confidential treatment or otherwise exempt from public disclosure, including issuance of protective orders to parties or taking testimony in a closed hearing.

§ 179.83 Disclosure of data and information.

(a) Within 60 days of the publication of the notice of hearing under § 179.20, or, if no party will be prejudiced, within another period set by the presiding officer, the Assistant Administrator shall file with the hearing clerk, in accordance with § 179.80, the following documents numbered and organized in the manner prescribed by the presiding officer:

(1) The portions of the administrative record of the proceeding developed under Part 178 of this chapter, and under Part 177 or Part 180 of this chapter, that are relevant to the issues in the hearing.

(2) All documents in the files of OPTS containing factual information or expert opinion, whether favorable or unfavorable to the position of OPTS, which relate to the issues involved in the hearing. For purposes of this paragraph, "files" means the principal files in OPTS in which documents relating to the issues in the hearing are ordinarily kept. Documents that are internal memoranda reflecting the deliberative process, are attorney work product, or were prepared specifically

for use in connection with the hearing, are not required to be submitted.

(3) All other documentary data and information upon which OPTS plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the notice of hearing and the nature of the supporting evidence that OPTS intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the Assistant Administrator, the submission complies with this section.

(b) Within 70 days of the publication of the notice of hearing or, if no party will be prejudiced, within another period of time set by the presiding officer, each party other than OPTS shall submit to the hearing clerk in accordance with § 179.80 the following documents, numbered and organized in the manner prescribed by the presiding officer:

(1) Any objections that the administrative record filed under paragraph (a)(1) of this section is incomplete.

(2) All documents (other than those filed under paragraph (a) of this section) in the party's files containing factual information or expert opinion, whether favorable or unfavorable to the party's position, that relates to the issues involved in the hearing. For purposes of this paragraph, "files" means the party's principal files in which documents relating to the issues in the hearing are ordinarily kept.

(3) All other documentary data and information the party plans to rely upon in the hearing.

(4) A narrative position statement on the factual issues in the notice of hearing and the nature of the supporting evidence the party intends to introduce.

(5) A signed statement that, to the best knowledge and belief of the party, the submission complies with this section.

(c) Submissions required by paragraphs (a) and (b) of this section may be supplemented later in the proceeding, with the approval of the presiding officer, upon a showing that the material contained in the supplement was not reasonably known by or available to the party when the submission was made or that the relevance of the material contained in the supplement could not reasonably have been foreseen.

(d) If a party fails to comply substantially and in good faith with this section, the presiding officer may infer that such failure was for the purpose of withholding information that is unfavorable to the party's position, and may make such further adverse inferences and findings with respect to such failure as are warranted.

(e) Parties may reference each other's submissions. To reduce duplicative submissions, parties are encouraged to exchange and consolidate lists of documentary evidence. If a particular document is bulky or in limited supply and cannot reasonably be reproduced, and it constitutes relevant evidence, the presiding officer may authorize submission of a reduced number of copies.

(f) The presiding officer will rule on questions relating to this section.

§ 179.85 Purposes of preliminary conference.

The presiding officer will conduct one or more preliminary conferences for the following purposes:

(a) To determine the areas of factual disagreement to be considered for the following purposes:

(b) To establish any necessary procedural rules to control the course of the hearing and the schedule for the hearing.

(c) To group parties with substantially similar interests, for purposes of presenting evidence, making objections, cross-examination, and presenting oral argument.

(d) To obtain stipulations and admissions of facts.

(e) To take other action that may expedite the hearing.

§ 179.86 Time and place of preliminary conference.

A preliminary conference will commence at the date, time, and place summoned in the notice of hearing, or as otherwise specified by the Administrator or presiding officer in a subsequent notice. The preliminary conference may not commence until after expiration of the time for filing notices of participation under § 179.26. The presiding officer may specify that two or more such conferences shall be held.

§ 179.87 Procedures for preliminary conference.

Parties in a hearing must appear at the preliminary conference(s) prepared to present a position on the matters specified in § 179.85. A preliminary conference may be held by telephone, or other electronic means, if appropriate.

(a) To expedite the hearing, parties are encouraged to prepare in advance for the conference. Parties should cooperate with each other and should request information and begin preparation of testimony at the earliest possible time. Failure of a party to appear at the preliminary conference or to raise matters that could reasonably be anticipated and resolved at that time will not delay the progress of the hearing, and constitutes a waiver of the rights of the party regarding such matters as objections to the agreements reached, actions taken, or rulings issued. Such failure to appear may also be grounds for striking the party's participation under § 179.26(e).

(b) Each party shall bring to the preliminary conference the following specific information, which will be filed with the hearing clerk under § 179.80:

(1) Any additional information to supplement the submission which may have been filed under § 179.83, which may be filed if approved under § 179.83(c).

(2) A list setting forth each person who has been identified as a witness whose oral or written testimony will be offered by the party at the hearing, with a full curriculum vitae for each and a summary of the expected testimony (including a list of the principal exhibits on which the witness will rely) or a statement as to when such a summary will be furnished. A party may amend its witness and document list to add, delete, or substitute witnesses or documents.

(c) The presiding officer may hold preliminary conferences off the record in an effort to reach agreement on disputed factual or procedural questions.

(d) The presiding officer shall issue and file under § 179.80 a written order reciting the actions taken at each preliminary conference and setting forth the schedule for the hearing. The order will control the subsequent course of the hearing unless modified by the presiding officer for good cause.

§ 179.89 Motions.

A motion, unless made in the course of a preliminary conference or a transcribed oral hearing before the presiding officer, must be filed in the manner prescribed by § 179.80 and include a draft order. A response may be filed within 10 days of service of a motion. The moving party has no right to reply, except as permitted by the presiding officer. The presiding officer shall rule upon the motion.

§ 179.90 Summary decisions.

(a) After the hearing commences, a party may file a written motion, with or without supporting affidavits, for a summary decision on any issue in the hearing. Any other party may, within 10 days after service of the motion, which time may be extended for an additional 10 days for good cause shown, serve opposing affidavits or countermove for summary decision. The presiding officer

may set the matter for argument and call for the submission of briefs.

(b) The presiding officer will grant the motion if the objections, requests for hearing, other pleadings, affidavits, and other material filed in connection with the hearing, or matters officially noticed, show that there is no genuine disagreement as to any material fact bearing on the issue and that a party is entitled to summary decision.

(c) Affidavits should set forth facts that would be admissible in evidence and show affirmatively that the affiant is competent to testify to the matters stated. When a properly supported motion for summary decision is made, a party opposing the motion may not rest upon mere allegations or denials or general descriptions of positions and contentions; affidavits or other responses must demonstrate specifically that there is a genuine issue of material fact for the hearing.

(d) Should it appear from the affidavits of a party opposing the motion that for sound reasons stated, facts essential to justify the opposition cannot be presented by affidavit, the presiding officer may deny the motion for summary decision, order a continuance to permit affidavits or additional evidence to be obtained, or issue other just order.

(e) If a summary decision is not rendered upon all issues or for all the relief asked, and evidentiary facts need to be developed, the presiding officer will issue an order specifying the facts that appear without substantial controversy and directing further evidentiary proceedings. The facts so specified will be deemed established.

(f) A party may obtain interlocutory review by the Administrator of a summary decision of the presiding officer.

§ 179.91 Burden of going forward; burden of persuasion.

(a) The party whose request for an evidentiary hearing was granted has the burden of going forward in the hearing with evidence as to the issues relevant to that request for a hearing.

(b) The party or parties who contend that a regulation satisfies the criteria of section 408 or 409 has the burden of persuasion in the hearing as to those connections, whether the proceeding concerns the establishment, modification, or revocation of a tolerance or food additive regulation.

§ 179.93 Testimony.

(a) The presiding officer will conduct such proceedings as are necessary for the taking of oral direct testimony and for the conduct of oral cross-examination of witnesses by the parties. The presiding officer shall limit oral cross-examination to prevent irrelevant or repetitious examination.

(b) Direct testimony shall be submitted in writing, except that the presiding officer may order direct testimony to be presented orally in those unusual cases where the memory or demeanor of the witness is of importance. Written direct testimony shall be in the form of a verified statement of fact or opinion prepared by the witness, in narrative form or in question-and-answer form. Written direct testimony may incorporate exhibits. Such a verified statement or exhibit may not be admitted into evidence sooner than 14 days (or such other reasonable period as the presiding officer may order) after the witness has delivered to the presiding officer and each party a copy of the statement or exhibit. The admissibility of the evidence contained in such a statement is subject to the same rules as if such testimony had been given orally.

(c) Oral cross-examination of witnesses will be permitted. Each exhibit that a party intends to rely upon in cross-examining a witness shall be furnished to the other parties not later than 3 days (or such other reasonable period as the presiding officer may order) before such exhibit is used in the cross-examination.

(d) Witnesses shall give testimony under oath or affirmation.

§ 179.94 Transcripts.

(a) The hearing clerk shall make arrangements to have all oral testimony stenographically reported or recorded and transcribed, with evidence that is admitted in the form of written testimony or exhibits attached or incorporated as appropriate.

(b) Unless the presiding officer orders otherwise, parties shall have 15 days from the date that the transcripts of particular oral testimony first becomes available to propose corrections in the transcript of that testimony. Corrections are permitted only for transcription errors. The presiding officer shall promptly order justified corrections.

(c) As soon as practicable after the taking of the last evidence, the presiding officer shall certify

(1) That the original transcript is a true transcript of the oral testimony offered or received at the hearing, except in such particulars as the presiding officer specifies,

(2) That the written testimony and exhibits accompanying the transcript are all the written testimony and exhibits introduced at the hearing, with such exceptions as the presiding officer specifies; and

(3) The transcript with attached or incorporated material, as so certified by the presiding officer, shall be submitted to and filed by the hearing clerk under § 179.80.

(d) Copies of the transcript shall be available to the public in accordance with § 179.81; parites may make special arrangements through the hearing clerk to obtain copies on an ongoing, expedited basis.

§ 179.95 Admission or exclusion of evidence; objections; offers of proof.

(a) Written material identified as direct testimony or as an evidentiary exhibit and offered by a party in a hearing, and oral testimony, whether or direct or on cross-examination, is admissible as evidence unless the presiding officer excludes it (on objection of a party or on the presiding officer's own initiative) because it is irrelevant, immaterial, or repetitive, or because its exclusion is necessary to enforce the requirements of this part. The presiding officer in making rulings shall be guided by the principles of the Federal Rules of Evidence.

(b) If a party objects to the admission or rejection of any evidence or to the limitation of the scope of any examination or cross-examination, the party shall state briefly the grounds for such objection. The transcript shall include any argument or debate thereon, unless the presiding officer, with the consent of all the parties, orders that such argument not be transcribed. The ruling and the reasons given therefor by the presiding officer on any objection shall be a part of the transcript. An automatic exception to that ruling will follow.

(c) Whenver evidence is deemed inadmissible, the party offering such evicence may make an offer of proof, which shall be included in the transcript. The offer of proof for excluded oral testimony shall consist of a brief statement describing the nature of the evidence excluded. If the evidence consists of a document or exhibit, it shall be inserted in the record in total. If the Administrator in reviewing the record under § 179.112 decides that the presiding officer's ruling in excluding the evidence was erroneous and prejudicial, the hearing may be reopened to permit the taking of such evidence, or, where appropriate, the Administrator may evaluate the evidence and proceed to a final decision.

(d) Official notice may be taken of Agency proceedings, any matter that

might be judicially noticed by the courts of the United States, or any other fact within the knowledge and experience of the Agency as an expert agency. Any party shall be given adequate opportunity to show that such facts are erroneously noticed by presenting evidence to the contrary.

§ 179.97 Conferences during hearing.

The presiding officer may schedule and hold conferences as needed to monitor the progress of the hearing, narrow and simplify the issuances, and consider the rule on motions, requests, or other matters concerning the development of the evidence.

§ 179.98 Briefs and arguments.

(a) Promptly after the taking of evidence is completed, the presiding officer will announce a schedule for the filing of briefs. Briefs must include a statement of position on each issue, with specific and complete citations to the evidence and points of law relied on. Briefs must contain proposed findings of fact and conclusions of law.

(b) The presiding officer may, as a matter of discretion, permit oral argument after the briefs are filed.

Subpart F—Decisions and Appeals

§ 179.101 Interlocutory appeal from ruling of presiding officer.

(a) Except as provided in paragraph (b) of this section and in §§ 179.20(b), 179.26(e), 179.75(a), and 179.90(f), rulings of the presiding officer may not be appealed to the Administrator before the Administrator's consideration of the entire record of the hearing.

(b) A ruling of the presiding officer is subject to interlocutory appeal to the Administrator if the presiding officer certifies on the record or by document submitted under § 179.80 that immediate review is necessary to prevent exceptional delay, expense, or prejudice to any party or substantial harm to the public interest. When an order or ruling is not certified by the presiding officer, it shall be reviewed by the Administrator only upon appeal from the initial decision except when the Administrator determines upon the request of a party and in exceptional circumstances, that delaying review would be deleterious to vital public or private interests. Except in extraordinary circumstances, proceedings will not be stayed pending an interlocutory appeal. Where a stay is granted, a stay of more than 30 days must be approved by the Administrator.

(c) Ordinarily, the interlocutory appeal will be decided on the basis of the submission made to the presiding officer, but the Administraor may allow further briefs and oral arguments. Any oral argument will be transcribed and the transcript will be prepared and certified in the same manner as provided in § 179.94.

§ 179.105 Initial decision.

(a) After the filing of briefs and any oral argument, the presiding officer shall prepare and file an initial decision on the issues of fact in the hearing and the objections relating to those issues.

(b) The inital decision must be based on a fair evaluation of the entire record, and must contain:

(1)(i) A conclusion that no change is warranted in the order or regulation to which objection was taken; or

(ii) A conclusion that changes in the order or regulation are warranted, the language of the order or regulation as changed, and an effective date for the order or regulation as changed, which date must not be earlier than the 90th day after it is published unless the order contains findings as to the existence of emergency conditions that necessitate an earlier effective date.

(2) Findings of fact supported by substantial evidence that has been found admissible by the presiding officer, and citations to the record supporting those findings.

(3) Conclusions on legal and policy issues, if such conclusions are necessary to resolve the objections.

(4) A discussion of the reasons for the findings and conclusions, including a discussion of the significant contentions made by any party.

(c) Except as otherwise provided by order of the Administrator filed in accordance with § 179.80, after the initial decision is filed the presiding officer has no further jurisdiction over the matter and any motions or requests filed with the hearing clerk will be decided by the Administrator.

(d) The initial decision becomes the final decision of the Administrator by operation of law unless a party files exceptions with the hearing clerk under § 179.107 or the Administrator files a notice of review under § 179.110.

§ 179.107 Appeal from or review of initial decision.

(a) A party may appeal an initial decision to the Administrator by filing exceptions with the hearing clerk, and serving them on the other parties, within the period specified in the initial decision. The period may not exceed 30 days, unless extended by the Administrator under paragraph (d) of this section.

(b) Exceptions must specifically identify alleged errors in the findings of fact or conclusions of law or policy in the initial decision and, if errors in the findings of fact are alleged, must provide supporting citations to evidence of record. Oral argument before the Administrator may be requested in the exceptions.

(c) Any reply to the exceptions is to be filed and served within the period specified in the initial decision. The period may not exceed 30 days after the end of the period (including any extensions) for filing exceptions, unless extended by the Administrator under paragraph (d) of this section.

(d) The Administrator may extend the time for filing exceptions or replies to exceptions for good cause shown.

(e) If the Administrator decides to hear oral argument, the parties will be informed of the date, time, and place, the amount of time allotted to each party, and the issues to be addressed.

§ 179.110 Determination by Administrator to review initial decision.

Within 10 days following the expiration of the time for filing exceptions (including any extensions), the Administrator may file with the hearing clerk, and serve on the parties, a notice of the Administrator's determination to review the initial decision. The Administrator may invite the parties to file briefs or present oral argument on the matter. The time for filing briefs or presenting oral argument will be specified in that or a later notice.

§ 179.112 Decision by Administrator on appeal or review of initial decision.

(a) On appeal from or review of the initial decision, the Administrator shall have the same powers as did the presiding officer in making the initial decision. On the Administrator's own initiative or on motion, the Administrator may remand the matter to the presiding officer for any further action necessary for a proper decision.

(b) The scope of the issues on appeal to (or on review by) the Administrator is the same as the scope of the issues before the presiding officer, unless the administrator specifies otherwise.

(c) After the filing of briefs and any oral argument, the Administrator will issue a final decision on the issues of fact in the hearing and the objections related to those issues. A final decision must contain the elements required for an initial decision by § 179.105(b).

(d) The Administrator may adopt the initial decision as the final decision.

(e) The Administrator's decision, or a summary of the decision and a notice of its availability, will be published in the **Federal Register**.

§ 179.115 Motion to reconsider a final order.

A party may file a motion requesting the Administrator to reconsider a final decision under this Part. Any such motion must be filed within 10 days after service of the final decision, and must set forth the matters claimed to have been erroneously decided and the nature of the alleged errors. Such a motion shall not stay the effective date of the final decision unless specifically so ordered by the Administrator.

§ 179.117 Designation and powers of judicial officer.

(a) One of the more judicial officers may be designated by the Administrator. A judicial officer shall be an attorney who is a permanent or temporary employee of the Agency or of another Federal agency. A judicial officer may perform other duties. A judicial officer who performs any duty under this part may not be employed by OPTS, by the Pesticides and Toxic Substances Division of the Office of General Counsel, or by any other person who is a representative of OPTS in the hearing. A person may not be designated as a judicial officer in a hearing if he or she performed any prosecutorial or investigative functions in connection with that hearing or any other factually related hearing.

(b) The Administrator may delegate to the judicial officer all or part of the administrator's authority to act in a given proceeding under this part. Such a delegation does not prevent the judicial officer from referring any motion or case to the Administrator when appropriate.

Subpart G—Judicial Review

§ 179.125 Judicial review.

(a) The Administrator's final decision is final agency action reviewable in the courts as provided by FFDCA section 408(i) or 409(g)(1), as of the date of entry of the order, which shall be determined in accordance with §§ 23.10 and 23.11 of this chapter. The failure of a person to file a petition for judicial review within the period ending on the 60th day after the date of the entry of the order constitutes a waiver under FFDCA section 408(i) or 409(g)(1) of the right to judicial review of the order and of any regulation promulgated by the order.

(b) The record for judicial review of a final decision under this part consists of the record described in § 179.130.

§ 179.130 Administrative record.

(a) For purposes of judicial review, the record of a hearing that culminates in a final decision of the Administrator under § 179.105(d) or § 179.112(c) ruling on an objection shall consist of:

(1) The objection ruled on (and any request for hearing that was included with the objection).

(2) Any order issued under § 177.125 of this chapter to which the objection related, and:

(i) The final regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(3) Any order issued under § 177.130 of this chapter to which the objection related, the final regulation that was the subject of that order, and each related notice of proposed rulemaking.

(4) Any order issued under § 180.7(g) of this chapter to which the objection related, and:

(i) The final regulation or petition denial that was the subject of that order.

(ii) The petition to which such order responded.

(iii) Any amendment or supplement of the petition.

(iv) The data and information submitted in support of the petition.

(v) The notice of filing of the petition.

(5) Any order issued under § 180.29(f) of this chapter to which the objection related, the final regulation that was the subject of that order, and each related notice of proposed rulemaking.

(6) The comments submitted by members of the public in response to the notice of filing or notice of proposed rulemaking, and the information submitted as part of the comments.

(7) All other documents or information submitted to the docket for rulemaking in question under Part 177 or Part 180 of this chapter.

(8) The notice of hearing published under § 179.20.

(9) All notices of participation filed under § 179.26.

(10) Any **Federal Register** notice issued under this part that pertains to the proceeding.

(11) All submissions filed under § 179.80.

(12) Any document of which official notice was taken under § 179.97.

(b) The record of the administrative proceeding is closed:

(1) With respect to the taking of evidence, when specified by the presiding officer.

(2) With respect to pleadings, at the time specified in § 179.98(a) for the filing of briefs.

(c) The presiding officer may reopen the record to receive further evidence at any time before the filing of the initial decision.

4. By amending Part 180 as follows:

PART 180—[AMENDED]

a. By revising the authority citation to read as follows:

Authority: 21 U.S.C. 346a, 371a; Reorg. Plan No. 3 of 1970.

b. In § 180.7 by revising paragraph (g) to read as follows:

§ 180.7 Petitions proposing tolerances or exemptions for pesticide residues in or on raw agricultural commodities.

* * * * *

(g) If the petition is not referred to an advisory committee, or upon receipt of the report of an advisory committee under § 180.12(c) if such a referral occurred, the Administrator shall determine, in accordance with the Act, whether to issue an order that establishes, modifies, or revokes a tolerance regulation (whether or not in accord with the action proposed by the petitioner), or whether to publish a proposed tolerance regulation and request public comment thereon under § 180.29. The Administrator shall publish in the **Federal Register** such order or proposed regulation. An order published under this section shall describe briefly how to submit objections and requests for a hearing under Part 178 of this chapter. A final regulation issued under this section shall be effective on the date of publication in the **Federal Register.**

§§ 180.13–180.28 [Removed]

c. By removing §§ 180.13 through 180.28.

d. In § 180.29(a) by removing the period at the end of the first sentence and adding in its place the words ", or a regulation modifying or revoking an existence tolerance or exemption.".

e. In § 180.29 by adding paragraphs (e), (f), and (g) to read as follows:

§ 180.29 Adoption of tolerance on initiation of Administrator or on request of an interested person.

* * * * *

(e) The Administrator shall provide a period of not less than 30 days for persons to comment on the proposed regulation.

(f) After reviewing any timely comments made, the Administrator may by order establish, modify, or revoke a tolerance regulation, which order and regulation shall be published in the **Federal Register.** An order published under this section shall state that persons may submit objections and

requests for a hearing in the manner described in Part 178 of this chapter.

(g) Any final regulation issued under this section shall be effective on the date of publication in the **Federal Register.**

f. By revising § 180.30 to read as follows:

§ 180.30 Judicial review.

(a) It is the Agency's view that the Act does not allow a person to obtain direct judicial review of a regulation issued under this part that establishes, amends, or revokes a tolerance regulation or a regulation exempting a pesticide chemical from the need for a tolerance. However, if an objection to such action is submitted to the Administrator in the manner prescribed by Part 178 of this chapter, judicial review may be obtained of the Administrator's action on the objection. See sections 408(d)(5) and 408(i) of the act.

(b) A decision under § 180.29(a) that a request does not warrant the issuance of a proposed regulation is final agency action. Although the Act makes no special provision for review of such final agency action, the action may be reviewable under other provisions of the United States Code (see, e.g., 5 U.S.C. 701–706, 28 U.S.C. 1331).

[FR Doc. 88–24125 Filed 10–18–88; 8:45 am]

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federal register

Wednesday
October 19, 1988

Part VIII

Department of Transportation

Federal Aviation Administration

Petition for Exemption From the Age 60 Rule; Notice of Reopening of Comment Period for Petitions for Exemption

Federal Register

Part VIII

Department of Transportation

Federal Aviation Administration

Petition for Exemption From the Age 60 Rule; Notice of Reopening of Comment Period for Petitions for Exemption

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[Docket No. 25008; Ref. 51 FR 26622, July 24, 1986; and 51 FR 34520, September 29, 1986]

Petition for Exemption From the Age 60 Rule, Reopening of Comment Period

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of reopening of comment period for petitions for exemption.

Background

In May 1986, a petition for exemption was submitted to the FAA on behalf of Melvin M. Aman and 38 other current and former airline pilots. Petitioners sought relief from the provisions of § 121.383(c) of the Federal Aviation Regulations (FAR) which state that no certificate holder may use any person, nor may any person serve, as a pilot in operations under Part 121 of the FAR if that person has reached his 60th birthday. The comment period was opened on July 24, 1986 and was closed on August 13, 1986. The period was reopened on September 29, 1986 and was closed again on October 28, 1986. On September 8, 1987, the FAA issued Denial of Exemption No. 4848 to the petitioners, Disposition Notice, 52 FR 36326 (1987).

Melvin M. Aman et al., petitioned the United States Court of Appeals for the Seventh Circuit for review of the Denial of Exemption No. 4848, Petition for Review of an Order of the Federal Aviation Administration, *Melvin M. Aman v. Federal Aviation Administration*, No. 87–2598 (7th Cir. 1988). The Court vacated the order denying the exemptions and remanded to the FAA for further consideration. The Court concluded that, while the petitioners had failed to show that their protocol, combined with existing methods of operational testing, would screen out all increased risks of incapacitation or undetected skill deterioration among pilots older than sixty, "the FAA failed to set forth a sufficient factual or legal basis for its rejection of the petitioners' claim that older pilots' edge in experience offsets any undetected physical losses" *Melvin M. Aman v. Federal Aviation Administration*, No. 87–2598, slip op. at 21 (7th Cir. Sept. 12, 1988).

The Court remanded for further proceedings to provide findings and explanations addressing the matter. Accordingly, the matter of these petitions for exemption is being reopened for the purpose of addressing the Court's concerns.

Aviation accident statistics have previously been analyzed with respect to recency of pilot experience, total pilot experience, and pilot age. A report dated June 30, 1983, prepared under Contract No. DTRS57–83–P–080750 sponsored by the U.S. DOT Transportation Systems Center is entitled "The Influence of Total Flight Time, Recent Flight Time and Age on Pilot Accident Rates." A copy of the analysis has been placed in Docket No. 25008. Public comment on the analysis is invited as are other comments on identifying any relationship between pilot experience and any decrements associated with the aging process.

In addition to the petition referenced in the "Background" paragraph above, on February 24, 1988, John H. Baker and 17 other current and former airline pilots petitioned for an exemption from § 121.383(c), (Docket No. 25524). Counsel for this group of pilots requested that the FAA expedite the processing of the petition and waived any interest the petitioners may have had in adhering to the notice and comment procedures prescribed in Part 11 of the FAR. In light of the Seventh circuit's decision in the *Aman* case, the FAA will consider Mr. Baker's petition in light of any comments received in the reconsideration of the Aman petition.

Request for Comments

DATE: Comments must be received on or before November 18, 1988. The Federal Aviation Administration intends to issue a disposition of both petitions as soon as practicable after the close of the comment period.

ADDRESS: Send comments in triplicate to Federal Aviation Administration, Office of the Chief Counsel, Attn: Rules Docket (AGC–10), Petition Docket No. 25008, 800 Independence Avenue, SW., Washington, DC 20591.

FOR FURTHER INFORMATION: The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), Room 915G, FAA Headquarters Building (FOB–10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

This notice is published pursuant to paragraph (c) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR Part 11).

Issued in Washington, DC., on October 14, 1988.

John H. Cassady,

Assistant Chief Counsel, Regulations and Enforcement Division.

[FR Doc. 88–24204 Filed 10–17–88; 9:00 am]

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LIST OF PUBLIC LAWS

Last List October 18, 1988

This is a continuing list of public bills from the current session of Congress which have become Federal laws. It may be used in conjunction with "P L U S" (Public Laws Update Service) on 523-6641. The text of laws is not published in the **Federal Register** but may be ordered in individual pamphlet form (referred to as "slip laws") from the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402 (phone 202-275-3030).

H.R. 1596/Pub. L. 100-487

To amend title 28, United States Code, to create two divisions in the Judicial District of Maryland. (Oct. 14, 1988; 102 Stat. 2431; 1 page) Price: $1.00

H.R. 4028/Pub. L. 100-488

To authorize the Secretary of Agriculture to exchange certain National Forest System lands in the Targhee National Forest. (Oct. 14, 1988; 102 Stat. 2432; 2 pages) Price: $1.00

H.R. 4188/Pub. L. 100-489

To designate the United States courthouse located at 445 Broadway in Albany, New York, as the "James T. Foley United States Courthouse." (Oct. 14, 1988; 102 Stat. 2434; 1 page) Price: $1.00

H.R. 4267/Pub. L. 100-490

To authorize additional appropriations for the WEB Rural Water Development Project, South Dakota, authorize the use of Pick-Sloan Missouri Basin electric power by the Lower Brule Sioux Indian Tribe, and to rename certain facilities of the Central Valley Project, California. (Oct. 14, 1988; 102 Stat. 2435; 2 pages) Price: $1.00

H.R. 4276/Pub. L. 100-491

To designate the United States Post Office Building located at 1105 Moss Street in Lafayette, Louisiana, as the "James Domengeaux Post Office Building." (Oct. 14, 1988; 102 Stat. 2437; 1 page) Price: $1.00

H.R. 4433/Pub. L. 100-492

To designate the United States Post Office Building in Jeannette, Pennsylvania, as the "John Dent Post Office Building." (Oct. 14, 1988; 102 Stat. 2438; 1 page) Price: $1.00

H.J. Res. 576/Pub. L. 100-493

Designating February 19 through 25, 1989, as "National Visiting Nurse Associations Week." (Oct. 14, 1988; 102 Stat. 2439; 2 pages) Price: $1.00

S. 1518/Pub. L. 100-494

Alternative Motor Fuels Act of 1988. (Oct. 14, 1988; 102 Stat. 2441; 13 pages) Price: $1.00